

1 DEPARTMENT OF NATURAL RESOURCES
2 STATE OF MISSOURI

3
4 LAND RECLAMATION COMMISSION MEETING
5 Bennett Springs Conference Room
6 1738 East Elm Street
7 Jefferson City, Missouri

8 March 26, 2003
9 Public Meeting

10
11 BEFORE: Ted A. Smith, Chairman
12 Jim DiPardo, Vice-Chairman
13 Gerald E. Ross, Commissioner
14 Jim Hull, Commissioner
15 Mimi Garstang, Commissioner

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P R O C E E D I N G S

CHAIRMAN SMITH: Ladies and gentlemen, I'd like to welcome everyone to this hearing being conducted by the Land Reclamation Commission, specifically concerning the sand and gravel proposed regulations that have been published.

A couple of general comments on that.

We have received a great number of letters both for and against. I think we somewhat know people's position on that, but as a Commission, we want to hear those -- some of those voiced.

I would ask that if someone can speak for your group, that we not repeat it, merely in the interest of time. If you feel so inclined, of course, that's what the Commission is here for, is to hear your specific concerns.

I would like to ask you to try to, in general, if you're just making a comment as far as your position on that, on the rules, that you try to limit those to five minutes, and we can move ahead and make sure everyone has that opportunity, without going late in the afternoon.

At the same time, I'm aware that some people want to present some other language or a little bit of a change in what has been published so far, and certainly we will give those presenters an opportunity to make their issue known and give them an amount of time similar to

1 that.

2 A personal request, and that is, that I know
3 cell phones are a part of today's world. Certainly a
4 number of you here in the audience need to have them on.
5 But if you do get a phone call, I would ask that you leave
6 the room if you're going to carry on a conversation on
7 your phone.

8 I'd also like to comment that we have a court
9 reporter here who will be recording all of the comments
10 and presentations this morning, and this afternoon, if
11 needed. And if you will -- to speak, if you will come to
12 the podium, tell us your name, the group which you
13 represent, and if you will spell your last name so we're
14 assured of getting you properly identified on that.

15 On the back of the room as you came in, there
16 was some speaker cards that we requested you to fill out.
17 If you do wish to speak and haven't filled one of these
18 out, I would ask that you get one and do so, again, just
19 so we can ensure that everybody who wants to speak has
20 that opportunity, and we can call on them from there.

21 So with that, I'd like to start the meeting
22 this morning with just a brief introduction by the Land
23 Reclamation Program, and for that, Mike Larson is going to
24 give us information on that.

25 MR. LARSON: Thank you, Mr. Chairman, and good

1 morning everybody.

2 I have been asked to give a brief introduction
3 of where we've been and what has brought us here today.

4 It's been about two years ago that the Land
5 Reclamation Commission requested that the staff
6 incorporate into a rule what were at that time the Water
7 Pollution Control Program's guidelines for sand and gravel
8 extraction from streams.

9 We began that process in the summer of 2001,
10 and the rulemaking process was begun on those original
11 15 guidelines.

12 Due to some pretty significant opposition in
13 moving forward with those rules, the decision was made at
14 that time, in October, I think it was, of 2001, to
15 withdraw those rules from the process and to reach out
16 through a series of public meetings across the State of
17 Missouri to try to present the concept of in-stream sand
18 and gravel mining rules.

19 In December and January of 2001 and 2002
20 respectively, the staff did hold four public meetings and
21 discussed this idea with members of industry, members of
22 the public, and provided information as to what we were
23 trying to do with these rules.

24 About a year ago in this very room the
25 Commission held a hearing, a formal hearing, on the

1 proposed rules, and received a lot of testimony and a lot
2 of information at that time.

3 The Commission then considered all of that
4 information from comments received at the public meetings
5 leading up to the hearing and comments generated at the
6 hearing itself in the spring, throughout the spring of
7 2002.

8 Last July the staff was directed by the
9 Commission to form a work group, and the work group was to
10 be made up of interested people, interested parties, in
11 this rule -- the rules themselves, and to come back to the
12 Commission by the January 2003 meeting with a set of
13 recommendations from that work group.

14 That was accomplished. And in the -- at the
15 January 30th meeting of the Commission, 2003, those
16 recommendations were handed to the Commission.

17 Now, the Commission did not have time at that
18 meeting to come to a decision or to really have time to
19 review those recommendations, but it's been about
20 two months now and the Commission is now in a position to
21 listen to members of the work group.

22 And that really brings us to the purpose of
23 this meeting today.

24 It's basically to provide an opportunity for
25 members of the work group to meet with the Land

1 Reclamation Commission here in this room and discuss their
2 recommendations.

3 It's also an opportunity for any interested
4 member of the public to do the same thing.

5 This also is a meeting for the LRC, or the Land
6 Reclamation Commission, to hear arguments from members of
7 the work group and members of the public which are meant
8 to persuade the Commission in their final decision as they
9 move forward on a final decision for these rules.

10 So that is basically the purpose of this
11 meeting. That's a brief summary of where we've been with
12 these rules and where we are right now.

13 Before the meeting itself actually gets
14 started, I have a few small housekeeping details to attend
15 to.

16 As Ted mentioned, the Commission has been
17 receiving comment letters over the past six weeks. The
18 staff has been receiving these letters, a couple hundred
19 of them to date at least, a ballpark figure, and those
20 have been sent to the Commission on a weekly basis.

21 What I'm handing out now to the Commission are
22 letters that were received just in the past few days, and
23 there was no sense mailing them to the commissioners,
24 because they wouldn't have received them in time for this
25 meeting.

1 This will also be something for the Commission
2 to consider as they move forward in this process.

3 Those are the recent letters that have been
4 received by the program.

5 I also have a request from one of the members
6 of the work group, or one of the organizations on the work
7 group, the Ozark Council of Trout Unlimited.

8 And I wish to point out to the Commission, you
9 have this letter from this organization already previously
10 in your package that have been mailed to you, but they
11 make a comment that I feel the Commission needs to know
12 about right now before we move forward.

13 They state that they would like to point out
14 that in the proposed rule, or the Recommendation No. 3,
15 that either a mistake was made in the casting of the vote
16 or in the tallying of the vote.

17 This organization, Trout Unlimited, would like
18 to go on record that we support an undisturbed buffer of
19 100-feet wide, shall be maintained in an undisturbed
20 condition landward of the high bank for the length of the
21 gravel removal site, not 25 feet as recorded in the
22 official work group recommendations.

23 I have a copy of this first page off of their
24 comment letter for the Commission's information, so that
25 you can correct your copy of the recommendations.

1 That change has been noted.

2 Finally, a question was asked by Commissioner
3 Gastang at the last meeting, January 30th. There was some
4 discussion of how many permitted in-stream mining sites
5 there are in the State of Missouri right now and how many
6 of those would be exempted under current legislation that
7 is being considered.

8 Commissioner Gastang was interested in knowing
9 how many flood plain gravel mine sites there were in the
10 State of Missouri. She's not here now, but she will be
11 here later on. I will pass this information on to the
12 Commission.

13 Right now the program has 332 sites under
14 permit that mine sand and gravel in Missouri. That
15 includes flood plain and in-stream gravel mining,
16 332 sites.

17 257 of those sites are in-stream mining sites,
18 permitted in-stream gravel mining sites. Those are to be
19 differentiated between our flood plain mining sites.

20 We have 75 sites across the State of Missouri
21 that operate on the flood plains, not in-stream, in order
22 to mine sand and gravel.

23 So that's a little bit of housekeeping.

24 That was an answer to a question that
25 Commissioner Gastang had in January.

1 I think that's all I have. Thank you for your
2 patience in this.

3 That's a little introduction, a little
4 housekeeping on my part.

5 Are there any questions?

6 CHAIRMAN SMITH: I don't believe so.

7 Thank you, Mike.

8 MR. LARSON: Thank you.

9 CHAIRMAN SMITH: A comment -- and I see in just
10 glancing at a number of these letters, is that they
11 address Senator Steelman's bill, and the accompanying
12 Senator Steelman's bill is Senate Bill 360. That has been
13 kind of moved, I understand, folded into, in some parts,
14 into the Senate Bill 36.

15 Ladies and gentlemen, we are not here to
16 discuss, debate and have no input, really, into Senator
17 Steelman's bill.

18 That is over in the Capitol building. And we
19 can appreciate the comments that you support her position
20 and what's there, but I think that we are here today to
21 discuss -- is to get input on the rules which the --
22 regarding in-stream mining that would be following through
23 on the rulemaking process as supported by the Land
24 Reclamation Commission.

25 So you can make all of the comments as far as

1 you support Senator Steelman's bill, but that is really
2 not the purpose of our meeting here today.

3 So I'd like for you to kind of recognize that.

4 I'd like to start off -- and I don't know. I
5 didn't see if any of them are -- or meet any of them.

6 But are there any legislators here, either
7 senators or representatives, who would like to speak to
8 this?

9 MR. DUNN: Yes, sir. I would like to speak
10 last, if that's possible.

11 CHAIRMAN SMITH: Yes, sir.

12 Last as far as the whole group is concerned?

13 MR. DUNN: Yes, sir. Yes, sir.

14 CHAIRMAN SMITH: May I have your name?

15 MR. DUNN: Jim Dunn.

16 CHAIRMAN SMITH: Okay. I have Dunn down and in
17 that position, Mr. Dunn.

18 Any other legislators that are here?

19 Okay. We have representatives of the work
20 group who have compiled and put these rules together, and
21 I would like to start the meeting by asking
22 representatives from that work group to make their
23 comments.

24 And what we've got on here and to read off is
25 Randy Scherr.

1 Randy.

2 MR. SCHERR: Thank you, Mr. Chairman.

3 You surprised me by calling me first.

4 My name is Randy Scherr, and I serve as the
5 Executive Director for both Missouri Concrete Association
6 and the Mining Industry Council of Missouri.

7 Obviously, we've been very interested in this
8 issue for, I guess, 10 or 12 years. We have members in
9 both groups that are significantly impacted by these
10 regulations, and we're working through those issues
11 through the '90s.

12 And obviously when the initial proposal was
13 presented about a year, a year and a half ago, we had
14 serious concerns about that.

15 But at that time, as part of that opposition,
16 we made a commitment to the staff and others that we were
17 certainly willing to sit down and resolve some differences
18 for various reasons.

19 We felt that in terms of the regulatory climate
20 for our members, that having a set of rules that we could
21 live with and operate under, yet provide the protection
22 for the resources, were a benefit both to the regulator
23 and to the regulated.

24 And we made that commitment a year ago, and I
25 hope we have at least been perceived as fulfilling that

1 through the rulemaking process or this task force process.

2 We have several members that served officially
3 on that task force, and I don't -- I was not an official
4 member of it, but, obviously, representing the
5 associations, we were present at most of the meetings, and
6 we felt that it was necessary to have a regulatory climate
7 that we could live within, because the benefits,
8 obviously, are that we have a set of rules that all of our
9 members could look at and understand and know that they
10 had to comply with.

11 There were some concerns prior to that under
12 the guidelines that one member might be subjected to a set
13 of guidelines under their permit conditions and another
14 member might have a different set of permit conditions.

15 So for those reasons, somewhat surprising to, I
16 think, people in the task force, we did support a
17 reasonable set of guidelines being -- or becoming rules
18 for that consistency within the process and the regulatory
19 framework.

20 As we moved through the various
21 recommendations -- and I'm not going to detail those. I'd
22 be glad to discuss any of them with you.

23 But as we worked through each of those items,
24 the goal was to have something that people could easily
25 understand, they could easily operate within, and it gave

1 the regulator the ability to apply a set of standards
2 across the board that also protected the resources.

3 As a caveat and a follow-up to that, I know
4 you're not particularly interested in comments on 360 and
5 the effects of 360, but we also view that as an issue
6 that's adjunct to this, because if we -- if we comply --
7 if we look at this set of proposed rules as a set of
8 guidelines that are good both for the regulated and the
9 regulators and for the resources, that the question then
10 is raised, are those sets of standards good for all -- for
11 anyone in the streams?

12 And I think if you agree with that, then you
13 look at the effects of 360 as it's in the substitute. And
14 it appears to be a good idea and a protection for
15 resources from areas that are presently not regulated.

16 But as we move these -- as we move through
17 these guidelines in the drafting process, we feel that we
18 have come up with something that the industry can live
19 with, that we can operate within, it brings some
20 consistency to the permitting process.

21 Each one of those sections, as we went through
22 that process, were words submitted by attorneys on all
23 sides. And you're going to hear from groups, obviously,
24 that don't think they're near strong enough, obviously,
25 but I think as we moved through that process, we felt it

1 was important to come up with something that everybody
2 could live with, and, again, give the Department something
3 to operate within in that consistency.

4 I think as you look at the differences between
5 the different recommendations that are in your booklet,
6 between Option 1, Option 2 and Option 3, Option 1
7 typically being the one that received the most votes,
8 there are -- I think there are significant reasons for the
9 choices between Option 1, Option 2 and Option 3.

10 And typically that was looked at throughout the
11 process as being something that afforded the protection,
12 yet was not overly burdensome.

13 And it was -- some of those recommendations
14 were certainly looked at as providing no significant
15 increase in the protection of the resources, yet were an
16 onerous burdensome requirement for the operator.

17 So in those cases what we tried to do was come
18 up with some balance, typically speaking, in regard to the
19 buffer stones and things like that.

20 So I'd be glad to try to answer any questions.

21 We do have an interest in, obviously, the
22 regulations as the primary set of recommendations, were
23 presented to you and would support those, both
24 associations would support those, and I'd be glad to try
25 to answer any detailed questions if you have any.

1 CHAIRMAN SMITH: Okay. Thank you, Mr. Scherr.

2 MR. SCHERR: Thank you.

3 CHAIRMAN SMITH: Ted Heisel.

4 MR. HEISEL: Good morning. My name is Ted
5 Heisel, H-e-i-s-e-l, and I represent the Missouri
6 Coalition for the Environment.

7 You also caught me somewhat offguard putting me
8 first like this, but that's okay.

9 CHAIRMAN SMITH: Everybody wanted to go last.

10 MR. HEISEL: Well, I think this is, what, my
11 fourth time, I think, now talking about these sand and
12 gravel regulations. This has been around for a while.

13 I think one of the fundamental things that we
14 need to keep in mind is that both the Corps of Engineers
15 historically and the DNR has had in place these guidelines
16 which are often referred to, and those are sort of a
17 starting point which industry and the rest of the citizens
18 of Missouri have lived with and operated under for quite
19 some time now.

20 And I think it has to be recognized that any
21 weakening of those guidelines is really backing away from
22 what was already a compromised position that was reached
23 back in the 1990s through a similar work group process
24 that the Corps of Engineers organized.

25 And one of the problems, I think, that we have

1 with what is being presented in the majority position out
2 of the work group is that there are significant areas
3 where those guidelines are backed away from.

4 And I'm not -- like Randy, I'm not going to go
5 into extensive detail. I don't want to be up here too
6 long, but I think we have provided several comment letters
7 into the record, and I'd be happy to talk about detail,
8 but those comment letters go into more depth in terms of
9 what some of our concerns are.

10 Just to touch on some of the key points in the
11 various recommendations, I think the key areas for the
12 coalition, anyway, are really -- when we talk about
13 buffers, when we talk about the depth of mining that is
14 allowed, when we talk about whether gravel mining will be
15 allowed in outstanding state and national resource waters
16 and when we talk about endangered species protection.

17 And on that first, on the first subject of
18 buffers, historically in the guidelines there was a 20-
19 foot recommended -- or 20-foot baseline of a buffer that
20 is to be left along the water's edge, and then between
21 the -- between the mining and the bank, the high-bank
22 vegetation.

23 And what we've seen in the majority position of
24 the work group basically is to make that much more vague.
25 We no longer have a definite starting point for what sort

1 of buffer should be required.

2 I think it's important to have that starting
3 point, and then if someone is operating in a situation
4 where they need a variance, well, they come into the
5 Department and they request a variance.

6 And I think it's been common practice with the
7 Corps and the Department to grant those variances where
8 they're -- where they're necessary.

9 But from the regulators' standpoint, I think
10 it's important to have that guidance, so when we're
11 dealing with an operator, they have some sort of baseline
12 to start from.

13 The other concern I have about the way the
14 majority's recommendation is written, is that it really --
15 it doesn't provide anything that is very enforceable.

16 For people that actually get permits, of
17 course, something will be written into the permit. But as
18 we're seeing in the Legislature, there is a real
19 conservative effort to exempt lots of these operations
20 from permit requirements.

21 But in that event that there is going to be
22 nothing definite to enforce and while they're subject to
23 these regulations, this will be the only thing that is
24 enforceable.

25 So when we have a word like a buffer zone of,

1 quote, adequate width shall be left, if we have a problem
2 operator out there, that is virtually impossible to
3 enforce.

4 Similarly, I think with regard to the depth of
5 mining, I really saw no problem with the original -- the
6 way the original guideline was written.

7 It basically established a minimum depth of not
8 going below the water elevation of the lowest elevation of
9 a dry stream.

10 And in the majority's recommendation we have,
11 you know -- again, we have a lot of additional vagueness
12 put in there that I think is going to cause problems for
13 the Department. And some of the ways in which we think
14 it's vague are set forth in our comment letters.

15 And then going on to what is our third key area
16 is this issue of outstanding national and State resource
17 waters, and I think the DNR and the Clean Water Commission
18 has always made a commitment protecting this handful of
19 streams around the State more than it protects other
20 waters of Missouri.

21 And in the Corps' guidelines and in the
22 DNR's -- the existing guidelines, gravel mining was
23 prohibited in reaches of those outstanding national and
24 State resource waters.

25 And we're not talking about a very large number

1 of streams. And we heard, anyway, in the majority's
2 recommendation, it would back away from that prohibition
3 and basically allow gravel mining on a case-by-case basis
4 in those waters.

5 And what we heard during some of the work group
6 meetings was with some of the people -- some of the
7 operators apparently felt that some of those streams
8 shouldn't be on the list.

9 And in my opinion, instead of -- instead of
10 this blanket backing away of protecting those streams, if
11 they really shouldn't be on the list, then I think they
12 need to present that to the Clean Water Commission and
13 say, this stream really is not deserving of special
14 protection, and we'll go through a process of actually
15 removing that segment of stream off of the list.

16 But I think this blanket backing away is going
17 a bit too far.

18 And then, finally, on endangered species, I
19 think we had sort of compromised on this to basically put
20 the burden on the Land Reclamation Program to have some
21 obligation to know -- at least know where endangered
22 species were located, so when the staff is reviewing these
23 permits, then they can make any appropriate conditions or
24 allow the operator -- or make the operator aware of the
25 location of that endangered specie.

1 You know, I think it's a reasonable
2 requirement. It really doesn't impose anything on the
3 operators themselves. It just simply tells the Department
4 to be aware that these species are out there and where
5 they're at.

6 CHAIRMAN SMITH: Okay. Any questions from our
7 Commissioners?

8 Okay. Thank you.

9 MR. HEISEL: Thanks.

10 CHAIRMAN SMITH: Becky Denney.

11 MS. DENNEY: Hello. I'm Becky Denney and I'm
12 from Kirkwood, Missouri, but I do own land in Southern
13 Missouri.

14 And in this case I represented the work -- the
15 stream team at meetings that we had in the work group.

16 And I just want to tell you that I request that
17 the LRC adopt regulations for in-stream commercial and
18 gravel mining. I think these are very important.

19 I'm willing to support the rules which -- the
20 specific rules which were supported by some of the fishing
21 groups. In most cases I did agree with those and I voted
22 with those, but in this case there may have been a couple
23 of discrepancies.

24 But for your sake in looking over the rules
25 that we discussed and voted on, I find, you know, with

1 three options, in some cases, this is very confusing, and
2 I'm willing to say -- in a couple of cases here I'm
3 willing to backtrack and support those rules as the
4 American Fishing Society voted on them.

5 And I do want to draw your attention to some
6 things that I think are very important, and that would be
7 Rule Nos. 1 and 2 that we talked about. This has to do
8 with the buffers again. And Rule No. 4 is the level of
9 excavation, and I think we should be very protective of
10 those rules. And also, again, No. 13, outstanding
11 national and State resource waters.

12 When we looked at the list, I looked at that
13 list, and some of those things I have been to at various
14 times in my life, and a few I haven't visited or I don't
15 know exactly where they are on that stream.

16 But I felt that -- you know, I think this is
17 very important to a lot of Missourians and to future
18 Missourians, and so I would like for you to pay special
19 attention and be protective of that so we have something
20 to -- we, the State, have something to say about that.

21 And, also, No. 15, in the case of threatened
22 and endangered species, I'd ask that you accept this rule
23 as I supported it and protect those species and those
24 habitats, particularly those habitats where those species
25 live.

1 Otherwise, thank you so much for your time.

2 CHAIRMAN SMITH: Any comments, questions?

3 Okay.

4 Representative Kuessner.

5 REPRESENTATIVE KUESSNER: I'm State
6 Representative Kuessner of the 152nd District, and I am
7 glad to get to be here today.

8 In fact, I gave up a fishing trip from probably
9 one of the best parts of the state to be here.

10 I know because the weather is right. I know
11 they're biting right now.

12 I want to tell you about my district and the
13 special gravel problems we have there.

14 I represent the counties of Shannon, Reynolds,
15 Iron and Southern Washington. And we have a tremendous
16 problem with gravel in the county that I'd like to talk
17 about first.

18 I was with an Iron County Commissioner
19 yesterday -- the day before yesterday, and we went around
20 and looked at some streams that they can't clean out
21 because of the gravel regulations.

22 These are small streams, definitely not
23 navigable, but they have -- they pose a problem for county
24 roads.

25 I was shown streams that are -- actually, the

1 water level is higher than the roadbed that runs next to
2 it, because they can't get in there and clean it out.

3 Now, what happens in our part of the country is
4 that a tree will fall and the gravel will build up on that
5 tree, kind of forms a dam, and it buries that tree, and
6 then another tree falls and it layers that gravel.

7 Sometimes that gravel will be as much as 10 or
8 12 foot deep, and it raises the streambed.

9 We also have streams that I would call loss
10 streams.

11 An uncle of mine who was in the Forest Service
12 did an experiment one time, and they had a loss stream
13 where you had a gravel bed and no water running, but they
14 saw where the water would pool on the bends.

15 So they built -- they dug down toward the base
16 and they built a concrete dam a foot above the gravel, and
17 that water eventually flowed over that dam, went back into
18 the gravel and disappeared again.

19 And I think we have several streams down in
20 South Central Missouri that are like that.

21 You can't have any kind of aquatic life that I
22 know of in a loss stream.

23 So when we talk about protecting the endangered
24 species and fish and crawdads and minerals and stuff like
25 that, we have to consider this special need in a special

1 situation.

2 And that's why I'm here today is to illustrate
3 to you that we do have a special situation.

4 I fished on the Sac River yesterday. We ran
5 ten miles above where the Osage and the Sac run together.
6 We didn't discuss gravel. Why do you think? Because
7 there is no gravel.

8 Now, this is in the early years, back in the
9 early 1800s, a fellow by the name of Schoolcraft (phonetic
10 sp.) came down through Potosi, northern part of my
11 district, and he came down through and crossed through
12 Texas County, Howell County and went over into Greene
13 County.

14 His job was to report on mineral deposits. He
15 talked about vegetation, he talked about the sage grass,
16 he talked about wildlife, he talked about the rivers, the
17 caves.

18 Now this is a gentleman from the East, I want
19 you to understand, and yet he never mentioned gravel one
20 time.

21 Why do you think that was?

22 I can bring down my neighbors from Illinois,
23 Ohio, Nebraska, take them on the river, and we're talking
24 about gravel all day long.

25 I say because it wasn't there.

1 This gravel is not natural to our part of the
2 country. It came after 1900 when the logging operations
3 came in.

4 And I support the logging operations. We need
5 to sell the timber. And that's another subject that I
6 want you to know that I stand firm on.

7 But the problem is escalating in our part of
8 the country to where holes of water that used to be there
9 that people could fish in are now filled up with gravel.

10 Now, I've been on the river all of my life. In
11 fact, I cut my teeth on an outboard motor when I was
12 probably less than ten years old. And my granddad used to
13 take me fishing, and all of the holes that we used to fish
14 in, out of those, about two-thirds of them are filled up
15 with gravel.

16 I would have to take you down there and
17 actually show you the situations.

18 Now, that's on the Current River. And there is
19 nothing you can do about that. That is national scenic
20 riverways, and that's -- that's a different -- a whole
21 different story. Getting to be able to remove gravel from
22 them would be almost an impossibility.

23 But I'm talking about the streams that feed
24 into that and also go two miles above and two miles below
25 each community.

1 We need to start getting that gravel out of
2 those rivers. We have commercial operators who are
3 selling concrete; we need to give them access.

4 I've seen in Van Buren, they removed the gravel
5 there above the bridge, and when they left, there was a
6 hole of water there that was probably 30 foot deep. They
7 did go down below the water's level.

8 That was one of the best fishing holes around
9 Van Buren, until the gravel eventually filled it back up
10 again.

11 They're great sources for raising fish. It's
12 just another body of water to do this.

13 When the river gets up, it brings in new fish
14 or it washes out some of the old fish.

15 So it's not damaging.

16 Our counties are economically hurting right
17 now. We need to be able to get that gravel at the
18 location where they need to put it on the roads. We need
19 to have accessibility to it.

20 Sometimes this might call for having to get out
21 in some of the streams, and I know that causes the hair to
22 stand up on folks in this room's neck, but so be it.

23 Because without being able to go out in those
24 streams, you're going to have less fish, endangered
25 species and all, because eventually you're going to have

1 more loss streams.

2 I could get into lots of little side stories
3 about that, but I went by a man's place and he had about
4 probably a six-acre field that was completely stripped
5 because the gravel washed it away.

6 And if you understand gravel movement like I
7 do, having been on the river all of these years, and I
8 even have a creek behind my house that I could show you
9 where it works, the gravel building up on the inside of
10 the bend.

11 Now, a river will bend and keep eating away
12 until it hits a bluff or it hits a rock for places where
13 it stops.

14 When it does stop, it will bend that gravel up
15 on the inside. That's where your gravel bar will be, and
16 that is where your gravel deposits are.

17 That's your best place to get gravel, because
18 you'll have a wide, deep bed of gravel there, and it will
19 just keep building up over the years, until, finally, I've
20 seen it be 15 foot above the water's level.

21 If you have any questions -- and I hope you do.
22 I hope you have questions of me. I'd like to answer them.
23 But that's basically what I came to say.

24 I didn't really put together a formalized
25 speech. I just came up here to plead with you, and also

1 talk to the Highway Department down in our part of the
2 country.

3 They're having trouble being able to clean
4 around the bridge pilings where the timbers and all build
5 up. They need to be able to go farther up the river and
6 remove that gravel. And so does the county on their low-
7 water bridges.

8 Any questions?

9 CHAIRMAN SMITH: Representative Kuessner, your
10 speaker card, you said you want my district and the South
11 Central section of Missouri to be under a different set of
12 guidelines.

13 Are you saying that we would exclude -- we
14 would exclude your district? Is that what you're trying
15 to look at?

16 And that the rules are okay for the rest of
17 state but we need to make an isolated case in your area?

18 REPRESENTATIVE KUESSNER: I'll put it a little
19 milder than you did.

20 I talked with the representatives all of the
21 way as far as Bollinger County, to the east of me. If you
22 go south to the Arkansas line and go north to I-44, I've
23 talked to these representatives. I've talked to the
24 representatives west of me over to Osage County and all of
25 the way north on to I-44.

1 I may have missed a few -- a few that overlap.
2 I talked to most of these representatives. You might say
3 90 percent of them, at least.

4 We feel like we have a unique situation that
5 the rest of the state doesn't have.

6 I don't know of any place else in the state
7 that has the large gravel problem that we do.

8 And as I made the point before, it's not
9 natural and it keeps building up, and we're going to lose
10 more streams.

11 I would like to see more lenient regulations.
12 There has to be regulations, more lenient regulations,
13 more where you come and look at our situation and consider
14 our unique problems.

15 And I think we do have unique problems, yes,
16 sir.

17 CHAIRMAN SMITH: Okay. Thank you.

18 COMMISSIONER ROSS: You mentioned the Iron
19 County commissioner?

20 REPRESENTATIVE KUESSNER: Yes.

21 COMMISSIONER ROSS: Did they indicate that they
22 had applied for or tried to remove gravel from the stream
23 and been denied?

24 It's my understanding that counties can remove
25 gravel for their own purpose without any restriction.

1 REPRESENTATIVE KUESSNER: What I'm talking
2 about is a flowing stream, and I understand their
3 understanding is that they can't get permission to go into
4 a flowing stream.

5 COMMISSIONER ROSS: Okay.

6 CHAIRMAN SMITH: Okay. Thank you.
7 Riley Godfrey.

8 MR. GODFREY: Thank you, Mr. Chairman.

9 As you know, my name is Riley Godfrey, and I'm
10 a landowner and I'm also a concerned citizen. I've been
11 working on these projects starting with the Corps of
12 Engineers in 1978 pertaining to water.

13 We have land that borders a Class B river and
14 we have land that is a Class C stream, flows through.

15 I've been working with Mike Larson here for
16 long before he got married. How is that?

17 Now, I'm disappointed in the Commission in that
18 they, according to the information that is put out in our
19 book here, to allow where -- that they say in here on
20 certain, certain day and certain, certain time, the
21 Commission directed us to do so and so, and also back from
22 the letter to Senator Steelman, it says we believe we have
23 the authority.

24 What is believed? Either you do or you don't.

25 Now, I worked for the government for 25 years

1 and I've been a test pilot, and it's either cut right or
2 left. There is no in between.

3 On the bullet, the handout that you have back
4 here today, if you'll go on to page 29, to line 11.

5 Now, I've been to the Meramec Regional Planning
6 Commission and testified at Senator Steelman's hearings
7 and stuff for the last several years, and what I tell you
8 I get out of the law book -- this is the Missouri law book
9 published in 1976.

10 And all of the streams, if you'll go down on
11 page 29 to paragraph -- to line 11, where it starts with
12 Mississippi River, period, Class C streams are those that
13 are not navigable but floatable.

14 That's false.

15 Class C streams are those streams that are not
16 navigable and not floatable.

17 Class B streams is a stream that is not
18 navigable but is floatable.

19 And A streams, we have the Missouri and the
20 Mississippi. In the Class B streams you've got many of
21 them, Meramec, Big Piney, Little Piney, Osage, Gasconade,
22 lots of them.

23 Class C streams -- and it states in the Supreme
24 Court ruling -- I have copies that was given to me in
25 1999. I have copies that was given to me after the last

1 meeting, dated the 18th of February of United States
2 Supreme Court rulings. And it's got their heading on it.

3 And a retired judge gave them to me and he
4 says, until you -- until the Supreme Court itself changes
5 these, A, B and C river, regardless of what the State
6 wants to do or what they think they can do, they are in
7 violation of that law.

8 And so Class C streams -- and it says right in
9 the book that Class C streams shall be the owner of
10 property of deed.

11 It doesn't say anything about that you can go
12 in in 2003 or anything.

13 It also states in there that he has the right,
14 as all of the rest of his land, he can have anyone ejected
15 for trespassing.

16 So it's very clear.

17 One of the things that I brought up before
18 several times -- and this is a Supreme Court ruling --
19 that this ruling was made an ordinance. Excuse me. It
20 was classified as an ordinance in 1787. That's before any
21 of us was around.

22 I'm sorry about that.

23 Declaring that the rivers shall be free to the
24 public, and so important was the provisions of this
25 ordinance deemed by Congress now, that it was imposed on

1 Wisconsin as a condition of admission to the union in
2 19-- in 1846, and they wouldn't let Wisconsin join the
3 Union until 1848, until they abided by those laws.

4 And those laws are the same ones that were
5 quoted you right here that they got off of the -- out of
6 the computer, off of the Internet, and it hasn't changed.
7 It's still the same.

8 So how the Commission can say that, hey, or
9 make rules and make regulations of this?

10 Now, A and B, sure. A and B rivers shall be
11 those -- those shall be the property of all of the
12 citizens in the state in which it flows or any state
13 hereafter. That was before we was ever a state in 1821
14 here.

15 So things are pretty clear here.

16 And they've got the legal counsel available to
17 them and why they don't use them?

18 So, in closing, I want to be sure that this is
19 on tape. I don't -- I don't want any mistakes about it.

20 If you don't take Class C out, I'm going to
21 authorize the legal department to start a class action
22 suit against the DNR and the Land Reclamation stuff, and
23 any of the other citizens that want to join us.

24 Is that on tape?

25 Thank you.

1 Any questions?

2 CHAIRMAN SMITH: Any questions?

3 Thank you, Mr. Godfrey.

4 MR. GODFREY: Thank you.

5 Oh, just one other thing I wanted to mention.

6 The Land Reclamation tried to control a dam

7 down at Rolla. Isn't that something?

8 I'll read the headlines to you.

9 Property owner fights DNR's attempt to regulate

10 his dam.

11 12 of March had a hearing, DNR, big headlines,

12 dam and reservoir, to determine that dam should not be

13 regulated.

14 They finally got the word that it's on private

15 property and it's his.

16 Thank you.

17 CHAIRMAN SMITH: Linda Garrett.

18 MS. GARRETT: Linda Garrett, G-a-r-r-e-t-t.

19 And I'm Associate Commissioner of Texas County.

20 We've talked to you about the economic impact

21 and stuff, and I don't know -- do they have a copy of

22 this?

23 MR. LARSON: They should have, Linda.

24 MS. GARRETT: I brought hard copies in case

25 they don't.

1 MR. LARSON: They have it.

2 MS. GARRETT: I wasn't going to get up and
3 talk, but I'm going to go ahead and tell you, the Land
4 Reclamation has a huge task before them. I know they do,
5 to decide what to do with this sand and gravel issue.

6 I've read most of the letters that were sent to
7 Mike on the Internet. A lot of them was form letters. A
8 lot of them, if you received them, you probably already
9 notice they was form letters.

10 Some of them had unreadable names to them.
11 Some of them had no addresses to them.

12 Some of them did have addresses, but they are
13 St. Louis, Kansas City, Columbia, Jeff City, trying to
14 protect the Ozark streams. And it just doesn't really
15 make a lot of sense.

16 I hope you realize that some of these letters
17 were from special interest groups, and I understand
18 special interest groups need to be heard. They're part of
19 Missouri.

20 But I would hope that the Commission would
21 understand that -- or would not let this weigh over county
22 elected officials' opinions.

23 We represent the people. We was voted to
24 represent the people.

25 I'm sure you're aware that the County

1 Commission Association of Missouri passed a resolution
2 that does not want to replace the guidelines with
3 regulations.

4 All of these commissioners that voted on this
5 resolution, the associate commissioners, was elected by
6 the majority of the people living in their county or in
7 their district. The presiding commissioners was elected
8 by the entire county, the majority of them.

9 The commissioners that voted on this
10 resolution, they live and work in their community. They
11 live and work near their streams. They love their
12 streams. A lot of them hunt and fish and canoe on their
13 streams.

14 What they don't -- I'm losing my notes.

15 They're not like some of the weekend fisherman
16 that come to fish in the streams once or a few times a
17 year and then go back to the city. They have to work with
18 these streams year-round.

19 They see that every day changes in the streams.
20 They know what to do to take care of these changes.

21 There may have been some un-- or a few
22 unrealistic studies that's been performed and some
23 exaggerated scientific examples shown, but some of these
24 studies don't affect -- or don't work on your rural
25 streams.

1 We've showed that over and over again. It
2 just -- just doesn't work.

3 The weekend fishermen that are opposing the
4 gravel mining don't realize that gravel mining in the
5 Ozarks is what made these streams some of the most best
6 streams in Missouri, because we did take gravel out of
7 them.

8 The people that want to save the world from the
9 people living in the Ozarks don't -- don't understand that
10 we've spent generations saving this part of the world for
11 them to use.

12 We have successfully dealt with our streams for
13 many years, but the proposed regulations will cause some
14 of the best farmland to be -- or tie our hands from doing
15 this and cause some of our best farmlands to be washed
16 away.

17 It probably won't happen in our lifetime, but
18 it could in our grandchildren's lifetime.

19 As our grandfathers before us, we want to pass
20 on to our kids the same thing, our future generations,
21 that was passed down to us.

22 This is why we continue to oppose changing the
23 present guidelines in the regulations.

24 We have not only worked hard to keep our
25 streams open with clear water running in them, but we have

1 done a pretty good job of it down in the Ozarks.

2 And I understand this meeting today is to kind
3 of help reword or word the regulations. And I'd like to
4 help you do that. It would be simple. You just put
5 present sand and gravel guidelines and not worry about any
6 regulations.

7 Thank you.

8 CHAIRMAN SMITH: Any comments?

9 Thank you, Commissioner.

10 Okay. Russell Wood.

11 MR. WOOD: Good morning. My name is Russell
12 Wood. I'm the President of the Ozark Chapter of the
13 Property Rights Congress.

14 I've spoken to you before. I've submitted
15 comments before, so I'm not going to be lengthy here
16 today.

17 Our membership is made up of some 300 plus
18 landowners in South Central Missouri and Texas. Most of
19 us are in Texas, Douglas, Wright, Ozark, Howell Counties,
20 a few in the adjoining counties.

21 We know that we are exempt from regulations
22 regarding what we might need to take from a stream for our
23 own personal use. We're aware of that.

24 But the regulations and rules come into effect
25 in regard to our management of our property and of our

1 resources on our property.

2 Removal of gravel is very necessary for the
3 proper management of a stream.

4 Regardless of what you may hear, it needs to be
5 done if you're going to preserve your adjoining property,
6 if you're going to work on controlling stream bank
7 erosion.

8 Something that the representative, when he
9 spoke here a while ago -- and, by the way, I could simply
10 echo everything he said. He hit it right absolutely on
11 the nose.

12 In the work group we tried many times to get
13 brought in that one-size-fits-all regulations, were not
14 realistic for the very reasons which he stated here
15 earlier.

16 That the gravel-filled stream in Southern
17 Missouri are a different ballgame from dirt-bottom streams
18 in our parts of the state.

19 That never got anywhere. But it certainly is
20 something that needs to be considered.

21 One of our main contention points from our
22 group is that there has never been -- that we have seen --
23 any actual scientific evidence of studies made which show
24 the need for the regulations and rules when removing
25 these -- in removing gravel from the Ozark streams.

1 Yes, we're told of studies in other states in
2 our country even, but the United States Geological survey
3 states in their literature -- and there was a member in
4 the work group from there that said the same thing -- that
5 there is very little information on gravel mining and its
6 related issues in Missouri.

7 They also say that in Missouri there is little
8 information about the extent and distribution of in-stream
9 mining.

10 This information is needed for a science-based
11 understanding for a future in-stream mining policy in
12 Missouri.

13 And that's basically all we're asking to see.

14 If it can be shown that the streams are being
15 damaged, which we feel they aren't in our area, and if it
16 can be shown that these rules and regulations would solve
17 problems, that would be different, but we haven't been
18 shown these things.

19 So, we know, you have a big job. We hope
20 you'll remember that the landowners are the real
21 conservationists.

22 Thank you.

23 CHAIRMAN SMITH: Thank you.

24 Any questions?

25 Okay. Thank you very much.

1 Travis Morrison.

2 MR. MORRISON: Thank you, Mr. Chairman, members
3 of the Commission.

4 If I could, I'd like to give you a couple of
5 handouts. This is the first handout, Mr. Chairman, is a
6 State outstanding resource water list, which I think would
7 be good to relook at. And the second handout --

8 CHAIRMAN SMITH: Can you give one to the
9 recorder for her insertion into the record.

10 MR. MORRISON: I may not have enough,
11 Mr. Chairman.

12 And the second is the handout that is the
13 recommendation from the task force of your commission.

14 My name is Travis Morrison. I'm from
15 West Plains, and I'm in the concrete business. And by
16 necessity -- not by preferred choice but by necessity, I'm
17 in the sand and gravel business.

18 I've been in the sand and gravel business for
19 the last two years, but I've been keenly interested in
20 this issue for the last 13 years, since I've been in the
21 concrete business.

22 Mr. Chairman, last month I was asked to speak
23 in Thayer, Missouri to a large gathering and meet staff.
24 Many people from your staff were there, a watershed
25 commission from the Central Ozarks.

1 And it took me two hours to try to give what I
2 regard as an attempt to be in the balanced discussion of
3 this whole subject. I'll not do that today.

4 I attempted to write a letter to you and the
5 members of the Commission, and after three or four pages I
6 realized that you wouldn't get through it.

7 I'm going to leave it to all of the other
8 presentations and to your staff to touch all of the
9 highlights of this very broad issue. It's hard to get a
10 full handle on it, I understand.

11 You're hearing from people that feel
12 passionately and emotionally from a private property
13 standpoint. You're going to hear from farmers about soil
14 erosion and their personal experiences, us as operators,
15 and, indeed, those that are keenly interested and
16 emotional about it from an environmental standpoint.

17 You have the challenge of trying to find that
18 balanced decision.

19 When you appointed your task force six to eight
20 months ago, we proceeded to meet. And I'm sure you've had
21 reports that for the first three or four meetings, those
22 discussions were quite contentious, and heed, indeed,
23 about the constitutionality that we're talking about
24 today.

25 We finally got down to discussions about

1 proposed regulations, your proposed regulations.

2 And we finally hammered out what we regarded as
3 compromises that nobody was very happy but at least the
4 majority of us felt like we could live with.

5 And those recommendations are before you in
6 their form. They're presented as the majority vote from
7 that task force. We regard them as the recommendation
8 from that task force to you for your consideration.

9 Those recommendations that we came up with are
10 not too far different than what I'm living with in my
11 guidelines right now, with two or three exceptions.

12 And that's what I want to condense two hours of
13 presentation down to.

14 Mr. Heisel was correct. Two of the more
15 contentious issues in the proposed recommendations were
16 the buffer zones from the stream bank edge and the water's
17 edge.

18 One of the other contentions was how low on a
19 gravel bar can we go.

20 You'll see from -- I think it's paragraph 3 and
21 4 in our recommendations to you, that we ask for some --
22 some more general proposed recommendations than the
23 20 feet.

24 And we've got good reason for doing that.

25 Representative Kuessner is right. There are

1 unique parts of the state when you consider these
2 recommendations.

3 Indeed, in our opinion, every stream is unique.
4 And, in fact, even portions of a stream are unique when it
5 comes to approaching them from an environmental
6 standpoint.

7 For us, as operators, some streams in South
8 Central Ozarks are so narrow, that if you take 20 feet
9 from the bank and 20 feet from the water edge, there is
10 nothing in between.

11 But, in fact, there is mine or gravel that can
12 be mined and ought to be mined if you listen to some of
13 the other testimony.

14 So the 20-foot width is one of the things that
15 we discuss. We argued back and forth. And you'll see the
16 wording that refers not to a 20-foot width but to
17 preventing turbidity in the water.

18 We felt that that was achieving what you and
19 your staff would want us to do, to mine in such a way that
20 we would not create turbidity in the water.

21 That would allow the flexibility for each
22 stream being different.

23 Keeping in mind that that stream protection
24 plan that we submitted to you still has to be approved by
25 your staff.

1 The other issue is the depth in a gravel bar.

2 Once again, we ask for flexibility. There has
3 been a long-hill disagreement on the part of those from
4 the South Central Ozarks and from others around the State
5 on the issue of head cutting.

6 Many of us feel quite strongly that in many
7 streams, not all streams in South Central Ozarks, but many
8 streams, and, probably, indeed, most streams.

9 The issue of head cutting is far less of a
10 significant environmental impact in those streams than it
11 might be in Central Missouri, Northern Missouri or in the
12 Bootheel, because our streams in that part of the state
13 are rock lined.

14 And the ability to have head cutting, there is
15 much less of an issue than it would be elsewhere.

16 We've all seen the pictures of the damage done
17 on Linn Creek from head cutting.

18 There is a situation that in our part of the
19 state where, incorrectly, gravel was taken below the water
20 level. I was asked to take over that site to manage it.

21 We've been monitoring it now for five years.
22 There has been four or five significant flooding events in
23 that course of time. It's a rock-lined stream, and there
24 appears to be -- I checked it as recently as the day
25 before yesterday. There appears to be no head cutting

1 that has ever occurred there.

2 Having said that, it is safe to say that the
3 whole scientific approach and whole scientific question
4 about head cutting in that part of the state is still in
5 my mind an open question.

6 Once again, we're asking for flexibility.
7 Indeed, every permit requested in that part of the state
8 would not be going below the water level. It would still
9 have to be approved by your staff. But we simply ask for
10 the flexibility on that -- on those two issues.

11 Otherwise, the recommendations that we made to
12 you are very similar to what we're living with in the
13 present guidelines.

14 There is one final point that I'd like to
15 clarify for you, because it has a lot of potential
16 emotions to it and a great deal of misunderstanding to it.

17 And that was the proposed regulation. I think
18 it was No. 13, about outstanding State and outstanding
19 national water resources.

20 The whole issue of outstanding State and
21 outstanding national water resources was really not an
22 issue for us in mining, until the proposed regulations
23 came out.

24 Indeed, it was six months into the process
25 before it was brought to my attention that this might

1 affect me.

2 I had no idea that a stream called Spring Creek
3 was on the outstanding State water resource list.

4 To my knowledge, none of us in mining really
5 had realized any impact from that list regarding what we
6 do until your proposed regulations came out at the
7 beginning of this process.

8 I was quite surprised to find that, because
9 there has been sand and gravel mining for 40 or
10 50 years on Spring Creek.

11 So I immediately started interacting with your
12 staff and trying to trace through that list.

13 You have it in front of you, and it bears
14 looking at, so you can make an informed decision on that
15 one item that has so much potential emotions associated
16 with it.

17 Let me, first of all, say that the outstanding
18 national water list, I'm not aware of anybody in our task
19 force that was proposing that we mine on the Current,
20 Jacks Fork or Eleven Points Rivers. Those are the three
21 scenic rivers in Missouri.

22 I doubt that that could be a decision made on
23 your part anyway. Probably that's at the Federal level.

24 There is an open question about above on those
25 streams, above and below the scenic riverways, but that --

1 that never came up for discussion, and that's another
2 issue.

3 Let me then turn to the outstanding State water
4 resource list, and you have that in front of you.

5 When I dug into this -- because it affects me
6 personally. Frankly, it has a very significant impact on
7 me personally. I don't know if it does on other
8 operators. I suspect it does, but I don't know that. But
9 it certainly does on me.

10 I looked at the list, and after weeks of
11 research, come to find out that the Clean Water Commission
12 controls that list and regulates that list.

13 Not your staff, the Clean Water Commission.

14 But yet the proposed regulations refer to this
15 list, so it has a great impact on what I do.

16 Most of the streams on this list I would agree
17 should be protected, because they're in parks or they're
18 in a national forest or in a State forest, and I can
19 understand why they're on a list and they need to be
20 protected. I don't argue with that.

21 But for one reason or another -- and it's never
22 been -- it's never been an issue before.

23 For one reason or another there are a few
24 streams on this list, that if you prohibit activity, it
25 would have a dramatic financial impact on some of us,

1 myself included.

2 The Spring Creek, for instance, in this list.

3 Now, it would suggest that all of it, 17 miles of it --
4 it's the fourth one from the bottom.

5 All 17 miles of it, it appears on this list, is
6 in the Mark Twain National Forest. But that's not true.

7 The upper four or five miles of it on the upper
8 stretches is in the Mark Twain National Forest. Indeed,
9 nobody can get in and nobody would want to get in or could
10 get in to do any mining on that stretch.

11 But the rest of it is in private farmland.

12 Now, the Spring Creek is a nice creek but it's
13 not a unique creek from any other Ozark creek.

14 It has barbed-wire fence. It's not a
15 spring-fed trout stream. There is not any floating done
16 of any consequences, unless a flood occurs. There may be
17 some fishing, but it's not regarded locally as a major
18 fishing creek. The whole bottom part of it is almost
19 entirely on private farmland.

20 I'm getting sand and gravel there at the full
21 consent and cooperation of a farmer and his family, and
22 would -- certainly would like and need to be able to
23 continue doing that.

24 My sand and gravel plant is on the lower end of
25 it, and there has been a sand and gravel plant there for

1 at least 30 or 40 years.

2 So our request and our recommendations to you
3 is that we not be denied permission to mine on streams
4 that are on this list but that it simply rise to a higher
5 scrutiny.

6 Now, nobody -- well, I wouldn't think. I'll
7 leave this to you on how you handle it.

8 Nobody would want to -- or would attempt, in my
9 mind, to go into the Montauk State Park to do sand and
10 gravel mining. They request a permit. Your staff would
11 certainly have the ability to deny that.

12 But if it's on a private farm and it's on a
13 creek that is not uniquely different from another creek, I
14 would simply ask for your consideration of that.

15 Now, Mr. Heisel is correct. I can go to the
16 Clean Water Commission and ask that they modify their list
17 to take this into account, but I think all of you
18 understand the challenge of that task. And I may indeed
19 attempt to do that, but in the meantime I need to be able
20 to continue to operate.

21 And I've attempted to be a good operator. I
22 hope your staff would agree with that. Anything they ask
23 me to do, I attempt to do in a professional way.

24 That doesn't say I probably don't make
25 mistakes, but they're not negligent and knowing mistakes.

1 That would hopefully clear up this emotional
2 issue about the outstanding State water resource list and
3 why we approached it the way we did.

4 We're asking to be able to mine on some of
5 these creeks that are on this list, but only with the
6 scrutiny of your staff.

7 I'll answer any questions, Mr. Chairman.

8 COMMISSIONER ROSS: Travis, in what you
9 provided on that issue of outstanding State resource
10 waters, is that language that you've submitted, to provide
11 that flexibility, or are you saying that's too restricted?

12 MR. MORRISON: Well, Mr. Ross, your staff knows
13 that I'm on this particular creek, and I've been there all
14 along. I'm permitted to be there.

15 And I hope they -- it's my understanding they
16 feel like I'm doing things properly now.

17 So having said that, that language or similar
18 language would allow me to continue operating.

19 I don't mind being looked at with some
20 additional scrutiny. I think I can rise to that
21 challenge.

22 I question, though, that this particular creek,
23 by being on this list, should subject me to any more
24 regulations than if I was on some other creek.

25 I -- I understand the reason why Spring Creek

1 was put on this list to begin with. It was -- I talked to
2 the Clean Water Commission, and it goes back, evidently,
3 20 or 30 years when the list was -- they had to go to
4 people that were retired to ask them why this list --
5 these streams were put on this list.

6 Evidently this particular creek was put on
7 because U. S. Forest Service thought at that time, 30 or
8 40 years ago, that they might want to eventually buy those
9 farms; and, therefore, they were the ones that requested
10 that this creek be on that list.

11 Of course, that hasn't happened, and it -- in
12 all likelihood it won't happen. But that's --

13 CHAIRMAN SMITH: Okay. Thank you.

14 MR. MORRISON: Thank you, Mr. Chairman.

15 CHAIRMAN SMITH: Okay. Robert Temper.

16 MR. TEMPER: My name is Robert Temper. I'm
17 here today representing Ozark Fly Fishers.

18 Ladies and gentlemen of the Commission, thank
19 you for the opportunity to be here.

20 Strong measurable regulation, this is the
21 answer. It protects the resources and provides guidance
22 to the operators and the agency. It's a win-win scenario.

23 Excavation standards must apply equally to
24 everyone. The best way to do this is via regulations.
25 It's visible to everyone. It applies to everyone

1 affected. It allows variances but doesn't start with
2 differences.

3 Guidelines imply variability. Regulations do
4 not.

5 It must be fair to all concerned, the industry
6 and the resource. Measurable standards are appropriate to
7 everyone.

8 The operator knows what is required, the agency
9 knows what is enforceable, and the public doesn't have to
10 guess about what he sees as to whether or not it's a
11 potential violation or not.

12 It's a way for everyone to get along.

13 Whatever rules you select, you need a total
14 package to support the intended effect.

15 The working group proposal, in my opinion, is
16 not easy to read, but taking the vote as an absolute does
17 not get you a working package.

18 I'll cite a few examples. Working Group
19 Item 2, been discussed here already, as voted on by the
20 majority in the working group, is not measurable. And
21 I'll quote from it.

22 A buffer zone of adequate width to prevent
23 turbidity and ensure the biological, physical and chemical
24 integrity of the water during times of operation shall be
25 left, yada, yada, yada.

1 Well, what does that mean?

2 If we asked everyone in this room today what
3 that meant, how many interpretations do you think we would
4 get?

5 If we just ask the Commission what that means,
6 how many interpretations will we get today?

7 Option 2 under that same issue, and I'll quote
8 Option 2.

9 An undisturbed buffer of 20 feet shall be
10 maintained between the removal area and the water line at
11 the time of excavation.

12 That is clear. 20 feet is measurable.

13 The equipment operator has an idea of what
14 20 feet represents without measuring.

15 And maybe it's 15. Maybe it's 25. But he
16 knows it's not zero. There is no interpretation required
17 on his part. This is what I'm aiming at.

18 There might be a need for a variance.
19 Mr. Morrison just explained why a variance is required.
20 At times that may be necessary, but you have a starting
21 point, if you select a measurable number.

22 Everyone has the same measurable standard,
23 strong measurable regulation.

24 And, in fact, listening to Mr. Morrison,
25 Travis, he has a valid point. And I -- I don't disagree

1 with adding an exemption to the regulation for the
2 outstanding waters area for where there are existing
3 mining operations, that they should be continued. I
4 really don't have a problem with that.

5 It's probably the thing to do, would help him
6 out, would help out everybody that is in that situation.

7 Somebody earlier said, one can't speak for all.
8 Maybe this is one of those cases where we ought to build
9 in the exemption right upfront. If it exists, let's live
10 with it. On the other hand, let's do it in a measurable
11 manner.

12 Go to the A standard. He's trying to do what
13 is needed, but if it's not measurable, how does he know
14 when you interpret he is in compliance?

15 And I've been on his side of the issue for that
16 industry for years, and I understand the point of the
17 renewable resource. Streams in Missouri are a renewable
18 resource if they're not destroyed.

19 The Conservation Department has taken steps to
20 revive the native smallmouth bass. This program is
21 currently on its way to producing a world-class fishery.

22 The economics of people coming to Missouri to
23 fish for smallmouth and the surrounding supporting
24 businesses is much more economically sustainable than
25 unregulated gravel mining.

1 Far more people can travel to Missouri than
2 Canada for the opportunity to fish for smallmouth if we
3 protect the fishery.

4 That represents big tourism dollars. But will
5 we want to advertise by saying, come to Missouri where you
6 can fish between the gravel mines? I don't think so.

7 With strong measurable regulations, you can
8 provide the opportunity for both gravel mining industry
9 and protect the resources of the streams. It's not an
10 easy task, but we think it's doable.

11 The work group in these hearings provided
12 little opportunity to hear from the true professionals on
13 both the positive and the negative sides of gravel mining.

14 The American Fishery Society is comprised
15 mostly of professionals in this field. If we need a
16 fallback position and something to rally around, I have to
17 throw my vote with the American Fisheries Society
18 position, and, as such, Ozark Fly Fishers has added our
19 name to the support of the American Fisheries Society's
20 position on the working group proposed rules.

21 In summary, I'll end up with the same message
22 that I started: Strong measurable regulations.

23 Thank you for the opportunity to discuss this,
24 and I look forward to your decisions.

25 Any questions?

1 CHAIRMAN SMITH: Comments or questions?

2 Yes, ma'am.

3 COMMISSIONER GARSTANG: I'm not sure if there
4 is an easy answer to the question. I bet there isn't or
5 we wouldn't all be here today.

6 I'm been reading a lot about the disagreement
7 about the buffer zone. Is there a brief explanation of
8 the importance of the buffer zone as far as the fishery?

9 MR. TEMPER: The turbidity problem --

10 COMMISSIONER GARSTANG: Yes.

11 MR. TEMPER: -- is initiated by the fines being
12 discharged from a stable part of the bank.

13 They all talked about where the gravel is that
14 is choking the streams, and someone alluded to the fact
15 that we had this problem with the foresting -- deforesting
16 of the State.

17 That's how the gravel got loose. It was
18 stable. With the fines in it, it's stable. With the
19 trees, grass, et cetera, it's stable. When the land use
20 is such that it frees up the gravel every time there is a
21 flood, it washes it and it washes it downstream.

22 And they're all right about where it deposits
23 it. It deposits on the inside.

24 COMMISSIONER GARSTANG: Okay.

25 MR. TEMPER: The fines that are introduced to

1 the stream when the stream is disturbed, either in running
2 through it, in digging in it, what have you, washed
3 downstream.

4 That's the problem with sitting in the areas
5 where the eggs are laid by the fish to hatch their young.
6 It's dissolved oxygen content, because when it becomes
7 cloudy, there is less oxygen in the water. I mean, all
8 kinds of detrimental things.

9 Having a buffer zone says there is no
10 interpretation of what is going to cause turbidity and
11 what isn't.

12 I'm going to stay away from the stream, be it
13 5 feet, 20 feet, 100 feet, a reasonable amount, and I'm
14 suggesting, pick a number that you think is reasonable and
15 provide for an opportunity for variances.

16 Some places you need variances going in. Other
17 places you may get in and operate and say, I can't really
18 operate this way. I need to come back to you for a
19 variance.

20 And that process should be relatively easy to
21 request and not take, you know, two years, that they're
22 done mining at that point before you ever get to hear it.

23 I'm not criticizing you. I'm just saying this
24 is the fact. They need that.

25 The other side of the issue is: If you keep it

1 out of the stream and it doesn't scar it, we can still get
2 the fishermen, the floaters, the kayackers, the
3 picnickers, and say, yes, there is a gravel mine and it's
4 been kept over here pretty good and the treatment is in
5 good shape. We can all live with it. That's the parity.
6 That's what we're looking for.

7 COMMISSIONER GARSTANG: Thank you.

8 CHAIRMAN SMITH: Thank you.

9 MR. TEMPER: Thank you.

10 CHAIRMAN SMITH: Is there anyone else here who
11 was a participant in the work study group who would like
12 to speak that didn't?

13 Yes, sir, come forward and please identify
14 yourself, please.

15 MR. CHAPMAN: I'm surprised, because I put mine
16 in to go first.

17 CHAIRMAN SMITH: I'm sorry. Your name is?

18 MR. CHAPMAN: Duane Chapman.

19 CHAIRMAN SMITH: Did you fill out a card? I'm
20 sorry.

21 I apologize, Duane. I had that it was given to
22 me in a stack of general public.

23 MR. CHAPMAN: If there is anybody else that
24 needs an extra copy, I'll leave them there.

25 Good morning. My name is Duane Chapman. I am

1 here on behalf of the Missouri Chapter of the American
2 Fisheries Society, which represents nearly 200
3 professional scientists who work on many of the economic,
4 social and scientific issues involving our State's
5 valuable aquatic resources.

6 We thank you for the opportunity to briefly
7 discuss the need for in-stream excavation rules that
8 strike a balance among competing resource users, while
9 protecting our streams for the long-term benefit of
10 citizens.

11 Gravel and sand mining from Missouri's streams
12 are economically important commodities, amounting to
13 \$41 million in direct value in 1995. However, fishing and
14 other stream-based recreation are also economically
15 important activities in Missouri.

16 Stream fishing alone accounts for 170 million
17 in direct expenditures in 1996. This figure does not
18 include the additional economic activity generated by
19 anglers, swimmers, hunters and other stream
20 recreationists.

21 While some miners understandably have concerns
22 about rules that may increase operating costs, the
23 alternatives supported by the Missouri Chapter of the
24 American Fisheries Society in the January 21 briefing
25 paper are essentially the same as conditions of the

1 U. S. Army Corps of Engineers General Permit No. 34, which
2 was in effect from April 1995 to April 1999.

3 So claims by rules opponents that excavation
4 rules will regulate them out of the businesses are without
5 basis.

6 Furthermore, there have been no documented
7 negative economic impacts to the Ozarks region or the
8 mining industry as a result of this earlier regulation.

9 Adopting excavation rules would provide a
10 foundation for fair competition among all commercial
11 gravel miners.

12 The negative effects of in-stream gravel mining
13 are well documented in the scientific research and have
14 been proven not only nationally but also in the Ozarks of
15 Missouri and Arkansas.

16 These effects include emotions of streamside
17 private property and its real estate value, erosion of
18 public property, damage to private and public
19 infrastructures, such as roads, bridges, pipelines and
20 utility lines, losses in productivity of valuable
21 fisheries and losses to biological diversity.

22 Claims by rules opponents that gravel must be
23 cleaned out of our streams to prevent erosion or should be
24 bulldozed against eroding stream banks to protect them are
25 quickly revealed as untrue once these claims are compared

1 to knowledge of stream behavior uncovered by scientists
2 over the last 20 years.

3 While you already know our position on each of
4 the rules as described in the January 21 briefing paper,
5 we urge you to give specific attention to two of the
6 rules.

7 Rule No. 2 requires an undisturbed buffer
8 between the removal area and the water line and the
9 excavation area and the stream bank.

10 It is important that a definitive buffer width
11 be established for enforceability.

12 Rule No. 4 affects the depth of excavation.
13 That to avoid the major damages from head cutting listed
14 earlier, it is imperative that excavation not be done
15 below the water surface elevation or below the lowest
16 point in the stream if the stream is dry.

17 We acknowledge that -- we acknowledge that your
18 task is not an easy one, but we urge you to seek
19 excavation rules that draw a fair balance between
20 continued economic viability of the in-stream mining
21 industry and stream resource protection and all of the
22 associated recreational, economic, social and
23 environmental benefits derived from healthy Missouri
24 streams.

25 We thank you, the Missouri Department of

1 Natural Resources, for inviting us to participate in the
2 four working group sessions, and special thanks to you for
3 the opportunity to speak today about this important stream
4 resource issue.

5 CHAIRMAN SMITH: Questions or comments by the
6 Commission?

7 Okay. Thank you very much.

8 I saw a hand. Are you a member of the work
9 group?

10 Okay. I'm sorry.

11 MS. GARRETT: (Inaudible.)

12 CHAIRMAN SMITH: I think, if we could, I would
13 like to give everybody a chance, and then we'll come back,
14 if you'd like to speak on that.

15 Yes, sir.

16 Again, I apologize that we -- I thought I
17 had --

18 MR. WENZLICK: My name is John Wenzlick. I'm
19 with Trout Unlimited, and I'm representing over 1,600
20 members here in Missouri. I was on the work group, and I
21 would just urge the Commission that we need these rules in
22 place for environmental, as far as operators, and we need
23 them for all of the parties involved.

24 And, um, we are not opposed to taking out
25 The gravel that is stacked 15-foot high, like

1 Representative Kuessner said this morning.

2 We just don't want you getting down into the --
3 into the -- below the water level.

4 I think we're in a minority when we voted on
5 those -- on the proposed rules. So I would urge you not
6 to just look at the ones that had the most votes and look
7 at the ones that will be the best for regulating the
8 gravel mining in our streams.

9 We have -- I'm particularly concerned about the
10 Ozark streams because that's -- that's where we have the
11 trout, that's where we have the cold-water resource.

12 We only have a couple hundred miles of cold-
13 water streams that will support trout. They are all in
14 the Ozarks where the big springs are.

15 One of the buffers that we need, that we ask
16 further correction on, was the size in the stream is
17 above -- above the streambed and the riparian area.

18 One of the reasons is to keep the -- keep the
19 cover and to keep that water warm -- or from getting warm.
20 Excuse me -- and so that we can preserve those areas,
21 those few areas that will support trout in the state.

22 And there is a lot of public land down there
23 that is affected by the -- by the private mining
24 operations above and below it.

25 And I thank you for your attention.

1 CHAIRMAN SMITH: Comments?

2 There was a person back here, I believe, that

3 was on the work group.

4 MS. FOLSOM: I'm representing Carla Klein who

5 was on the work group from the Sierra Club.

6 CHAIRMAN SMITH: And did you fill out --

7 MS. FOLSOM: Yes, I did.

8 Roy Hankerson (phonetic sp.) was also here, but

9 he had to leave.

10 CHAIRMAN SMITH: Okay.

11 MS. FOLSOM: My name is Terri Folsom, and I am

12 representing Carla Klein who represented the Sierra Club

13 on this work group.

14 And we just wanted to say that we believe it's

15 important to adopt some sand and gravel rules and

16 regulations to protect Missouri's rivers and streams, and

17 we support the proposed rules and regulations of the

18 American Fisheries Society.

19 That's all.

20 We have sent in letters before with our

21 extensive comments, and that's all that Carla had asked me

22 to say today.

23 CHAIRMAN SMITH: Okay.

24 Okay. Yes, ma'am.

25 Were you on the work group?

1 And I apologize again.

2 MS. ANDRE: Yes.

3 Cynthia Andre.

4 I was on the work group at that time
5 representing the Sierra Club, but I'm here today just to
6 talk as a landowner.

7 I've been a landowner on Bull Creek with my
8 husband for about eight years. Bull Creek is in the
9 southern part of Christian County. It's a typical Ozark
10 stream, quite pretty and a biocriteria reference stream
11 which is impaired at this point.

12 In the course of the eight years that I've
13 lived on that stream, I've had an occasion to visit or to
14 walk through about seven sand and gravel mining sites.

15 There are many more sites on that stream, but
16 they're on private property. They're hard to see.
17 They're hard to get to.

18 Of the ones that I've seen, 100 percent of them
19 were not in compliance with the Best Management Practices
20 recommended by the Department of Natural Resources.

21 The debris to which they departed from that
22 ranged from mild to egregious. And I could entertain
23 you -- if that's the word -- with stories about each of
24 those sites, but what I'd like to do is, since my time is
25 limited, is to talk to you just very briefly about the

1 most recent site that I walked through.

2 I was invited onto that site by the operator
3 who told us that he had had someone from Department of
4 Natural Resources and someone from the Army Corps of
5 Engineers out to see his site, that he had talked with
6 them and he didn't have a permit yet but he was going to
7 get a permit.

8 As I walked through that site, I saw a number
9 of things that were rather disturbing to me, and I
10 contacted the Land Reclamation Program when I was off the
11 site.

12 About two to three months later when they were
13 able to get out there, because they don't have the people
14 that they need, the staff that they need to adequately
15 respond to citizen complaints at this point, I finally
16 received a letter about some of the things I'd seen.

17 And I'd like to just share a little bit of this
18 letter with you.

19 He issued them a notice of violation for not
20 having a permit on that site, issued them a notice of
21 violation for mining below the water level, for mining
22 without proper buffers.

23 And in addition to that site, he found out that
24 this operator was operating on two additional sites that
25 were not permitted, one of them -- both of them in-stream

1 and off -- in the flood plain, open-pit mining.

2 He issued three violations in regard to those,
3 including a violation for mining without a permit, failing
4 to salvage topsoil at two sites, potential for erosion at
5 all three sites.

6 This is what we're dealing with as landowners
7 out there. And at this time, having no regulations for
8 the last three years, we have been without any kind of
9 resource when this has happened.

10 By inaction, you've created a situation where
11 us landowners are extremely vulnerable to having our land
12 mined, in effect, without sand and gravel miners even on
13 it because of the practices that they're using.

14 My land today is their gravel tomorrow, in
15 effect. They're able to, by their -- by the kind of
16 practices that they're using, they're destabilizing banks
17 on that creek and creating a worse situation, creating
18 more gravel.

19 You've heard it said today that we have all of
20 this gravel on those streams and we need to get the gravel
21 out. The fact is, that they are causing -- they're adding
22 to the problems of erosion and gravel on our streams.

23 We have two problems in regard to gravel. One
24 is that we have land-use changes that are contributing to
25 the gravel on the stream, but the second problem is the

1 sand and gravel miners.

2 You have an opportunity here to change that, to
3 do something to help protect us landowners. I know that
4 probably most of you do not live on creeks; you don't deal
5 with sand and gravel miners. So maybe you don't
6 personally understand what it's like to just be hanging
7 out there.

8 But imagine that there is another commission
9 that by its inaction has created a situation where
10 somebody can come and take a chunk of your house every so
11 often and you have to just sit there and watch them. You
12 have to watch them come, take the chunk and leave.

13 You know, how would that feel?

14 Try to put yourself in our place.

15 You know, you've heard a lot of statements
16 today that there are a lot of landowners out there who
17 welcome these sand and gravel miners and want them on the
18 creek.

19 Well, here is one who doesn't. Here is one who
20 wants some protection, who wants you to put some firm,
21 measurable, objective regulations in place, that people
22 can go out there and know whether they're following that
23 regulation or not.

24 The vague regulations drafted by the sand and
25 gravel miners are just going to cause more problems,

1 because every time a field inspector goes out there, there
2 is going to be an argument about whether it's adequate or
3 not, because there is no measures in their regulations.

4 You know, I also heard it said earlier that
5 you've got to make regulations that sand and gravel miners
6 can live with.

7 Well, I would leave you with this thought:
8 They ought to live with whatever you come up with as being
9 the minimum to protect our streams. It's not a right to
10 be out on our streams. There is no entitlement here.
11 It's a privilege.

12 Thank you for your attention.

13 CHAIRMAN SMITH: Thank you.

14 MS. ANDRE: Do you have any questions?

15 CHAIRMAN SMITH: Any questions?

16 Thank you for your comments.

17 Cindy Peterson.

18 Are you a member of the work group?

19 MS. PETERSON: Yes, I am. I'm Cindy Peterson,
20 with Peterson Gravel & Ready Mix.

21 I'm one of those sand and gravel miners, and I
22 have comments I want to submit.

23 I want to thank you all for the opportunity to
24 speak today, and I want to thank you, Larry Coen and his
25 staff, for providing us the opportunity to participate in

1 this work group.

2 And I'm not going to belabor everything that
3 has been discussed already. Although I would say, it's
4 been said that county -- our county governments can remove
5 gravel from the stream. They're exempt from these
6 regulations, as well as Missouri DOT.

7 And I do feel that my county and Missouri DOT
8 should be able to remove gravel from the streams to take
9 care of our roads in our area.

10 But my question is: As a commercial sand and
11 gravel miner, how are we -- what's the difference in
12 protecting the streams whether it's commercial mining or
13 for a county and State government?

14 You know, that's a question that really hasn't
15 been answered for us.

16 It seems like if you're a commercial miner,
17 you're damaging the streams; but if it's the county and
18 the State, then it's okay to mine that gravel.

19 And that seems to be a real diversity in the
20 rules to me.

21 Of course, buffer zones are a real concern for
22 us. I've heard that from producers, whether they're large
23 producers or small producers.

24 When we came on the work group, it was stated
25 that the goal was to try to come up with some workable

1 rules which would allow the mining of gravel, and I feel
2 that the majority of the work group, the rules that we
3 voted on and the majority agreed upon, do allow this goal
4 to be accomplished.

5 In our area, our gravel bars are small. A 20-
6 foot buffer would eliminate a lot of our gravel bars, and
7 we would not be able to accomplish that goal of protecting
8 the streams while being able to excavate the gravel.

9 It's also said that we could ask for a
10 variance. And with the Corps of Engineers we did have
11 variances, but at the same time we're going back to the
12 DNR staff, which right now we have a good working
13 relationship with, with Larry and Mike Larson.

14 But given some political climate change, maybe
15 some staffing changes, what if all of a sudden those
16 variances were not granted?

17 We're in a very capital-intensive business, and
18 this could be devastating to us if all of a sudden it says
19 the rule says a 100-foot buffer. Our gravel bars are not
20 that big.

21 Even if the rule said a 20-foot buffer, we
22 could not operate.

23 So that's where the buffer zones are very
24 important to us in terms of the stated rule.

25 We did work with Larry Coen, Bob Ziehmer from

1 Missouri Department of Conservation, the industry did, in
2 trying to come up with a workable solution to the buffer
3 zones.

4 And the wording that was worked out and
5 approved by the majority of the work group does allow for
6 us to continue mining and to protect the stream at the
7 same time.

8 Another area which hasn't been addressed has
9 been the economics. We do not have a source for sand in
10 our area. We would have to probably travel 200 miles
11 round-trip to -- to get sand. That means going to other
12 states, other parts of the state.

13 Our communities and counties are already
14 economically distressed. What sense does it make to send
15 our money out of our area, send jobs out of our area, send
16 our money out of state to purchase sand for a resource
17 that we have available, where we can take it from our
18 streams and protect the streams at the same time.

19 I think also someone mentioned the trout
20 streams a while ago.

21 Some of us producers talked. We're not aware
22 of any sand and gravel operations on trout streams at this
23 time.

24 Are you aware of where there might be a sand
25 and gravel producer on a trout stream in our area?

1 CHAIRMAN SMITH: Whoa, whoa. Wait. We'll have
2 some -- we'll ask the questions, please.

3 I don't want to open this up. We haven't had
4 the Red Cross in yet.

5 MS. PETERSON: That was just -- that was
6 something that was brought up, and we got to thinking, in
7 our area, we couldn't think of any sand and gravel miners
8 on trout streams.

9 Another thing, too, Cindy Andre alluded that
10 there wasn't enough DNR staff to enforce the rules as they
11 are written now, or the guidelines or whatever.

12 How will DNR pay for future staff, then, to
13 adequately enforce these rules if they are put into rules?

14 I know someone asked us how much that we paid
15 to excavate sand and gravel. I think we started out maybe
16 in the early '90s, late '80s, maybe paying \$100, a couple
17 of pages of paperwork. This year I'll pay probably
18 \$2,500, and I'll be submitting a four- to five-page stream
19 management plan. I notify adjacent landowners. I do
20 30 days of public notice. I have to have a consent from
21 the landowners for DNR to come in and inspect.

22 And I'm just curious. All of a sudden it's
23 like those guidelines carried no credibility for the fact
24 that, you know, we thought we had to do that in order to
25 be able to mine in the stream?

1 And what has happened that all of a sudden, you
2 know, it's just like those guidelines have no credibility?

3 I would just close by saying that we choose
4 to live in the Ozarks because we love it. My husband's
5 family has been in the gravel mining business for
6 50 years.

7 As I've said before, if we were doing damage to
8 our neighbors' land or property, they wouldn't be calling
9 us back to come and excavate the gravel.

10 We know the streams in our areas and we're
11 aware of their evolution, and we care about the loss of
12 the favorite fishing holes and the swimming holes.

13 I just urge you all to take into consideration
14 our concerns as stated in my comments.

15 And I thank you.

16 CHAIRMAN SMITH: Thank you.

17 Any questions or comments of Ms. Peterson?

18 Thank you very much.

19 Ms. Peterson, do you want a copy of your notes
20 inserted into the record?

21 MS. PETERSON: Yes, that would be fine.

22 CHAIRMAN SMITH: Do you have an extra one that
23 you can give the reporter, that way she has one?

24 I'm sorry. Are there any members of the work
25 study group here that I haven't recognized?

1 With that, Commissioner Garrett, I indicated
2 I'd let you have some other comments.

3 MS. GARRETT: I just had one question -- I'll
4 ask here -- from the American Fishery.

5 They was telling how much money was spent on
6 stream fishing, and I wondered where they came up with
7 that amount.

8 MR. CHAPMAN: The fishing economic data, 1996
9 National Survey of Hunting, Fishing and Wildlife
10 Associated Recreation.

11 MS. GARRETT: There is really no way of
12 determining what that is in-stream or lakes or --

13 MR. CHAPMAN: That's not true.
14 Evidently they have.

15 CHAIRMAN SMITH: The question has been asked,
16 the answer has been given, and you know where the data is
17 from.

18 MR. CZARNEZKI: What I want to call on, where
19 he knew of a trout stream where gravel was being mined?

20 Someone-- I think it was some of us nodded our
21 heads.

22 CHAIRMAN SMITH: Would you identify yourself?

23 MR. CZARNEZKI: I'm Jim Czarnezki of the
24 Missouri Watershed Coalition. It's a citizens
25 organization.

1 And the Little Piney is just south of Rolla, is
2 one stream that has gravel mining on it, had in the past.

3 They've worked with the Conservation Department
4 to improve that site, but there is gravel mining there.

5 Is that what you're thinking of, Jim Hawkins,
6 as well?

7 MR. HAWKINS: Yes.

8 CHAIRMAN SMITH: Okay.

9 Go ahead.

10 I want to -- again, I express my appreciation
11 for the Commission. People have kept their comments very
12 pointedly and directly, and the courtesy that has been
13 shown to all of the speakers, we thank you for.

14 We have a group of people who have asked to
15 speak who were not on that who represent various -- who
16 were not on the study group, and we'll get to those.

17 Before we do, though, a gentleman by the name
18 of Joel Vance dropped a statement off for me, which he
19 said he would like to be read and inserted into the
20 record. It's very short.

21 My name is Joel Vance. I have been an outdoor/
22 environmental/nature writer for 35 years and a canoeist
23 and river angler for longer than that.

24 I have seen firsthand the damage that gravel
25 mining can do to a stream. Missouri's river resources are

1 a far greater economic boom to the state than are gravel
2 mining operations.

3 It would be false economy, not to mention
4 environmentally outrageous, to allow unregulated gravel
5 mining in any form.

6 I fully support the compromise measures
7 endorsed by the American Fishery Society and hope this
8 Commission has the wisdom and courtesy to adopt it.

9 So pass that down and ask that that be inserted
10 into the record.

11 CHAIRMAN SMITH: Don Huckins.

12 MR. HUCKINS: My name is Dan Huckins, and I
13 just represent my family.

14 I've been floating, canoeing, camping on
15 streams all of my life. Most of the things that I was
16 going to say have already been said. There is a couple of
17 things that I did want to mention.

18 Most important to me, I think it should be
19 known that we need to base these rules on the weakest
20 link.

21 I feel that everyone in here, I'm sure, would
22 abide by any rules that were made, but I feel that we need
23 to make sure that -- I just urge you that whatever we --
24 whatever is decided on, you keep in mind the weakest-link
25 factor.

1 I also wanted to have on the record that I do
2 support the American Fisheries Society and all of the
3 rules that they represent.

4 All right. Any questions?

5 CHAIRMAN SMITH: Okay. Thank you, Dan.

6 MR. HUCKINS: Thank you.

7 CHAIRMAN SMITH: Norman Leppo.

8 Am I saying that correctly?

9 MR. LEPP0: Mr. Chairman, Commissioners, my
10 name is Norman Leppo, L-e-p-p-o. I'm kind of a last-
11 minute substitute for a member who was on the work
12 commission, Al Agnew, representing the Missouri Smallmouth
13 Alliance.

14 I am really here kind of with three hats: One
15 as an individual. I've been fishing the streams of
16 Missouri for about 40 years. I'm here on behalf of the
17 Missouri Smallmouth Alliance, and I'm here as a messenger
18 on behalf of the group sponsoring the statement of
19 position which I've just handed out.

20 And I might just briefly enter into the record
21 that this statement of position is supported by the
22 Missouri Coalition for the Environment, the Missouri
23 Smallmouth Alliance, the Missouri Stream Team
24 Representative, the Ozark Fly Fishers, the Ozark
25 Riverkeepers Network, the Sierra Club-Ozark Chapter, the

1 Southwest Missouri Fly Fishers, and Trout Unlimited-Ozark
2 Council.

3 I don't have an exact count of what that means
4 in terms of individuals, but it's in the thousands. So
5 we're really not talking about a tiny, little group here.

6 Personally, I make about -- I wish it were
7 higher -- but about 20 trips a year onto the various --
8 most of the fishable streams here in Missouri.

9 Many of them are just one-day trips, but, also,
10 I'm able to get out for a couple, three days and camp
11 along the banks.

12 I can address you as someone with a
13 considerable amount of local municipal regulatory
14 authority from my own personal experience, so I'm not
15 unsympathetic to the problems that you face.

16 No one that I know is opposed to gravel mining.
17 None of the people who we're talking about here is
18 categorically opposed to gravel mining. The real issue is
19 whether it's done responsibly. And the sad part is, it's
20 always the few who ruin it for the many.

21 And so the young man who just spoke a moment
22 ago who said the weakest link, that's a very critical
23 statement, I'm sure, because there are those who will
24 always take advantage, and you and I know there are
25 various a sundry people who have talked about the bad

1 situations.

2 I'm absolutely certain that there are multiple
3 gravel miners who perform in a very reasonable,
4 responsible manner, but not all of them, and that's really
5 what this is all about.

6 The Department of Natural Resources and the
7 Missouri Department of Conservation have extensive staffs.
8 It's been my privilege to meet and discuss these and other
9 issues with a number of these people, and I would urge
10 this Commission to draw upon the considerable expertise
11 that those people bring to the table and can provide you
12 on this really critical issue.

13 They are extremely knowledgeable. They are
14 hard-working people.

15 I've met, as I say, with a number of them, and
16 they have a lot to provide you.

17 You have an enormous task. You can't know all
18 of these things, but you do have very talented staff that
19 is available to you to provide you with the counseling you
20 need in order to make an educated decision.

21 Just a couple of quick comments.

22 Guidelines from my own experience are
23 effectively useless because, for the most part, they are
24 interpretive, and when you have something that needs to be
25 interpretative, you have conflict.

1 Therefore, when you have regulations that are
2 specifically written so there are no vagaries, you
3 have -- and as others have said -- a measurable condition
4 written into the regulation.

5 And I'm not here to say whether the buffer
6 should be 20 or 30 or whatever it is, but your staff can
7 tell you what experience as shown, what scientific
8 research has done. And some of these people have been
9 doing this work for 20 or 25 years, so this is not exactly
10 a brand new subject for many of them. And they can give
11 you the answers to some of these very specific questions.

12 I guess the other thing that I did want to say
13 is the issue of variance.

14 It's not possible to write a set of rules,
15 guidelines, regulations, however you want to describe
16 them, that covers every situation for every aspect.

17 There are people here, I'm sure, have quite
18 correctly said that streams have special conditions that
19 other streams don't experience.

20 You have to find a way to write a set of
21 guidelines that is an umbrella -- I mean, a set of
22 regulations that is an umbrella, and then provide for -- I
23 don't want to say a relatively easy, but an orderly
24 variance process, so those who have conditions that really
25 can't be followed under whatever guidelines -- I keep

1 using the wrong word here -- regulations you establish can
2 be readily varied.

3 So I would urge you, that with the thousands of
4 people with whom I'm really representing and the language
5 that you see here, to write enforceable regulations so
6 that there can be a measure and everybody will know
7 exactly what rules they have to play by.

8 Thank you.

9 CHAIRMAN SMITH: Thank you.

10 Any questions?

11 CHAIRMAN SMITH: Okay. Wallace Warren.

12 MS. WARREN: Thank you.

13 My name is Wallace Warren, W-a-r-r-e-n, and I
14 am a business owner in Eureka, Missouri. I own an
15 insurance agency. I live on 160 acres in Franklin County.
16 And I'm a member of several organizations.

17 I'm on the Board of Directors with the Eureka
18 Chamber of Commerce, Board of Directors with the Henry
19 Shaw or Ozark Corridor Foundation. I'm an education
20 founder at Shaw Nature Research. I'm also a member of
21 Trout Unlimited and Ozark Fly Fishers.

22 Today I'm here primarily as a concerned and
23 involved citizen.

24 I would like to recommend that the LRC adopt
25 clear, definable and enforceable regulations as defined by

1 the American Fishery Society.

2 As a fly fisher and outdoors person, I spend a
3 great deal of time -- not as much as I'd like, but a great
4 deal of time and money on Missouri streams, both small and
5 large.

6 My interest is to protect this important
7 resource. One way to do this is through clearly defined
8 regulations that will help those without a working
9 knowledge to perform their operations, while still
10 preserving our valuable resource.

11 Some only understand value when placed in
12 monetary terms. This being the case, compare the revenue
13 generated through fishing, recreational use and tourism to
14 gravel production dollars.

15 It's very clear that it's already three times
16 the amount of revenue produced through these sources.

17 Those not from the Ozarks do have a vested
18 interest in our streams. You can ask the local business
19 owners in these communities how much they receive in
20 revenue or even depend on tourism, both local and out-of-
21 state.

22 A statement was made earlier regarding
23 generation saving this part of the State. But what's the
24 source or the cause of the gravel problem that we're here
25 today discussing?

1 It's been years of poor land management,
2 clear-cutting, loss of riparian stones, overtilling and
3 overgrazing, no regulations.

4 If one hasn't seen scientific evidence, they
5 haven't looked very far.

6 I define value in terms greater than dollars;
7 my time. So streams can be assigned value through quality
8 of life.

9 My niece caught her first bass on a fly rod
10 when she was 4 1/2 years old. My nephew turned one year
11 old last week.

12 Value to me is to offer a legacy to them, the
13 opportunity to also enjoy these beautiful waters of which
14 we are all stewards.

15 Again, I ask that you adopt clearly defined
16 regulations so it will help assure this legacy.

17 Thank you.

18 CHAIRMAN SMITH: Any questions for Ms. Warren?

19 Thank you.

20 Leslie Holloway (phonetic sp.).

21 MS. HOLLOWAY: I'm Leslie Holloway,
22 representing the Missouri Farm Bureau.

23 CHAIRMAN SMITH: I'm sorry? With who?

24 MS. HOLLOWAY: The Missouri Farm Bureau.

25 Farm Bureau has been involved with sand and

1 gravel issues for many, many years, with many people here,
2 as well as many others who are not here.

3 This process on this rulemaking I would say
4 started somewhere about the time that there was a
5 presentation made by Department of Conservation personnel,
6 an educational session for the Clean Water Commission, in
7 November of 1999.

8 At that educational session the presentation
9 featured a particular example, and I don't remember
10 exactly which example it was, but it was of a situation
11 where there had been sand and gravel mining that had
12 caused some serious damage to a creek and banks.

13 The discussion at that time was about whether
14 there was authority -- existing authority to address the
15 situation like this, and there were those who maintained
16 that there was existing authority to address the space.

17 One example was through the TMDL process, total
18 maximum daily loads.

19 That authority still exists, and we would
20 maintain that there is existing authority to address many
21 of these situations that are portrayed as some of the
22 worst examples of what can happen with sand and gravel
23 mining.

24 But moving on to the current proposal. We
25 supported DNR's decision to suspend the proposed rule in

1 November of 2001 and extended the comment period until
2 public meetings could be held. We also supported the
3 Commission's decision in July 2002 to appoint an advisory
4 group.

5 With respect to the advisory group, the
6 briefing booklet on page 2, DNR states, the work group's
7 goal was to come to consensus on proposed rulemaking
8 language that will protect Missouri streams from the
9 effects of mining, yet satisfy most all concerns of the
10 affected public.

11 However, many members of the work group
12 believed the goal was to recommend whether rules were
13 necessary, and, if so, recommend proposed rules.

14 This sentiment is reflected in the paragraphs
15 on page 30 in Attachment D, summarizing the first three
16 meetings.

17 Consequently, before the provision-by-provision
18 review of the Department's recommendation began, members
19 of the work group requested a vote on the question, should
20 the guidelines become rules, not referring to any specific
21 guideline or rules, just the concept.

22 The vote was 12 to 11 against rules.

23 The need to convert from guidelines to
24 regulations remains unclear for many.

25 One concern of many of those who voted against

1 rules is the treatment of landowners who want sand and
2 gravel removed, but, A, cannot do it themselves, and, B,
3 may not need the excavated material themselves.

4 Another concern is the treatment of counties
5 that cannot excavate sand and gravel for themselves.

6 In terms of environmental impact, DNR and
7 Department of Conservation acknowledge that landowners who
8 want to clear their streams of gravel are generally
9 conscientious and want to do the right thing.

10 The problem is, that many landowners do not
11 have the necessary equipment and, instead, find someone
12 like a neighbor who has the equipment.

13 If the landowner has no need for the material,
14 it might be delivered to a neighbor who does, or sold.

15 The frustration expressed by some of the
16 landowners and others on the work group with these
17 concerns prompted Senator Steelman to look at legislative
18 options.

19 Senator Steelman convened discussions with DNR
20 and Department of Conservation and confirmed with
21 representatives of both agencies that there were no
22 objections to exempting from permit small operators, as
23 defined in existing statute as those mining 5,000 tons or
24 less annually, on the condition that these operators meet
25 operational standards set by DNR.

1 This is what Senator Steelman's House Committee
2 substitute for Senate Bill 360 does.

3 There has been some confusion about the load
4 limit, the 5,000 tons.

5 It does not refer to 5,000 tons from one site.

6 In practice, an unpermitted operator following
7 operational standards could not remove 5,000 tons from one
8 site.

9 In terms of cost, even with the increase this
10 year from \$100 to \$300, the permit program for small
11 operators costs the agency more than the permit fee brings
12 in.

13 We're not talking about letting bad actors off
14 the hook. There are horror stories that necessitate
15 government intervention. But the vast majority of
16 in-stream sand and gravel excavation sites do not warrant
17 additional regulation.

18 Certainly guidelines are more than adequate for
19 individual landowners, whether they conduct the excavation
20 themselves or not.

21 I wanted to address just a couple of other
22 issues that were raised here by others.

23 Mike Larson referred to the letter pertaining
24 to one of the points, and I was unclear as to whether he
25 was saying that the recommendation -- the majority-picked

1 recommendation should state a 100-foot buffer as opposed
2 to a lesser buffer, and I would like to clarify that point
3 with him.

4 I also understand that there was a meeting on
5 March 7th of the Commission, where there was discussion of
6 how to proceed with these -- with these recommendations,
7 and I would think that for the record it might be helpful
8 to provide some information pertaining to that meeting to
9 members of the work group and other interested parties.

10 Finally, I would just talk a little bit about
11 the question pertaining to science and what has been
12 referred to as documented damage.

13 Again, there are bad examples. You can find
14 bad examples of just about any type of action that is
15 taken.

16 But for the purposes of addressing the
17 landowners' concerns, it's very difficult to find
18 information that supports further restricting what they
19 feel is necessary to do with their property.

20 I can't add much to many of the statements that
21 have been made by those who feel that the landowners are
22 good stewards of their land.

23 And Representative Kuessner made some of those
24 comments and many other witnesses made similar comments.

25 I don't think that it's accurate to say that

1 this activity has been totally unregulated. That reg
2 allegation has been made, and that simply is not true.

3 There is reference in some of the material that
4 was distributed to the work group of some of the data and
5 scientific information that is out there.

6 And it would appear to me that if it's taken in
7 the balance, that there are -- there is a wide range of
8 impacts that can be considered to be documented from --
9 pertaining to sand and mining -- sand and gravel mining or
10 to other causes.

11 And I think that's another important point that
12 needs to be made.

13 There was reference by the previous witness to
14 overgrazing and overtilling and clear-cutting. These are
15 practices that many farmers also do not support and are
16 changing -- have changed those practices within the --
17 within recent years, and have consequently made many
18 improvements in the land that they are managing.

19 But, again, those are not activities that are a
20 part of this sand and gravel proceeding.

21 And it's important to attribute what you do
22 with the sand and gravel activity to the impacts that it
23 is actually having and how widespread those impacts are.

24 I think with that, if there are any questions,
25 I'd be happy to try to -- try to respond.

1 CHAIRMAN SMITH: Any comments or questions?
2 Thank you very much.
3 MS. HOLLOWAY: Thank you.
4 CHAIRMAN SMITH: Roy Henderson.
5 UNIDENTIFIED SPEAKER: I believe he had to
6 leave.
7 CHAIRMAN SMITH: Ron Hardecke.
8 MR. HARDECKE: My name is Ron Hardecke, and I'm
9 a farmer from Owensville, Missouri.
10 As a landowner and a soil and water district
11 board member, and I serve on the State Board of Missouri
12 Farm Bureau, I've been actively involved in soil and water
13 conservation for many years.
14 Over the past several months I've also served
15 on the work group looking at these potential regulations.
16 My interest in this issue is to ensure that
17 landowners have the ability to properly maintain and
18 manage the soil and water resource on their property,
19 specifically stream bank erosion sites.
20 Increased regulations over the past 20 to
21 25 years have caused many operators simply to give up on
22 using gravel out of our streams.
23 This has added to the problems landowners have
24 in getting excess gravel removed from their streams.
25 If not removed, the buildup of gravel leads to

1 shallow water, excessive vehicle trace growth in the
2 channel, and eventually the blocking of the existing
3 channel.

4 Then we get accelerated stream bank erosion.

5 And in one of the work group sessions, a
6 representative from MDC explained to us the concept of
7 dynamic equilibrium.

8 And I agree that when the water -- volume of
9 water is going to go somewhere. So whether the river or
10 stream is full of gravel, it's going to cut a new channel.

11 And often that is taking out the riparian
12 corridor and the farmers' land.

13 Landowners don't want to lose the riparian
14 corridor along their streams or their land. Once the
15 riparian corridor is gone, there is no protection for
16 their land.

17 On the paper I gave you, there are three
18 concepts to this that I'm touching on. I've touched on
19 the soil erosion.

20 The second one being the fish habitat.

21 And you've heard discussion on both sides of
22 the fish habitat here, but I think it's been properly
23 demonstrated already that many of these streams in
24 Southern Missouri are full of gravel, to where -- to the
25 point where, where are we going to have for the fish to

1 live?

2 On several occasions in talking with fishery
3 biologists about this issue, I've asked, do the fish need
4 deep water to live in? And the answer is, yes.

5 And so when we get these streams completely
6 full of gravel, we are damaging the fisheries habitat, the
7 fish habitat.

8 And the third part of it is the water quality.

9 Whenever stream banks erode, there is a
10 tremendous amount of material loosened and that goes
11 directly into the channel, into the system.

12 The sediment portion of it may get back out but
13 the gravel portion doesn't. It stays in the system.

14 Everyone always asks, where does the gravel
15 come from?

16 Well, I think if you think through it
17 logically, there is a tremendous amount of it that comes
18 from the stream bank erosion, whether it be on a little
19 ditch or on a big erosion site in the river.

20 And in agriculture we're often blamed for bad
21 farming practices causing the gravel buildup.

22 But I think if you think about it, the land we
23 farm doesn't -- gravel doesn't wash off of that land.
24 There may be a little sediment once in a while.

25 In today's practices, we have spent 50 years

1 finetuning soil erosion practices, and we've cut it very
2 substantially.

3 I think the one area that we haven't looked at
4 as a whole country is the impact of stream bank erosion
5 and the detrimental effect that it has had in all of these
6 areas.

7 One reference I want to make in the book here,
8 you've got some photos in the back pages.

9 And in one of the work group sessions, we were
10 shown these. They're much better, they are, in the book.

11 It's the second-to-last photo.

12 And it shows an eroded bank, that the operator
13 has pushed gravel up under the eroded site, and the
14 statement underneath -- and this is what we state in the
15 work group also -- materials pushed into the bank will
16 eventually cause the vegetation to die and expose the
17 banks to erosion if not corrected.

18 I find that statement completely misleading and
19 actually false, because that bank had already eroded and
20 exposed the roots of those trees and they were to the
21 point of washing out.

22 So it did not cause them to die. They may die
23 because they've been eroded.

24 And I think you have to look at the reality of
25 these situations. There is a lot of emotional appeals

1 being made here today.

2 But that was one of the -- one of the sites
3 used as justification for implementing these regulations.

4 And I think the other -- the other aspects, I
5 think, has not been touched on.

6 There is a lot of talk about scientists,
7 experts, and the time -- period of time that they've been
8 working on this issue.

9 Well, the landowners have never been included
10 in that field of experts or scientists, but there is no
11 one that cares more about their land than the landowner
12 themselves.

13 And they've tried to maintain it until the
14 point over the last years that they were told that they
15 could not maintain their stream banks and their riparian
16 corridors.

17 So I think that at some point in time we need
18 to take into consideration the 40 -- 30, 40, 50 years that
19 these landowners have lived on this streams, maintained
20 them and tried to leave them in a better place.

21 And we need to make regulations or guidelines
22 or whatever you come up with that will allow them to do
23 that. Because they are, as been stated earlier, the real
24 conservationists.

25 And I would -- I would ask you also to consider

1 that, you know, we have had a policy through many of our
2 agencies and regulations over the last 20 years of not
3 maintaining anything, just let it go, let it be natural.

4 Well, we can see, this has caused an additional
5 buildup of gravel. It has not solved the problem.

6 So I would ask you to consider looking at some
7 things that landowners try to do and have tried to do and
8 have done in the past and it's worked. There is many
9 examples out there. They're just not documented.

10 Because we don't, as landowners, take the time
11 to put it in a book. We're busy working.

12 So in closing, I think it's imperative that the
13 decision you make today makes it easier for landowners to
14 get gravel removed from their streams in order to help
15 conserve our natural resources.

16 Thank you. I'd be happy to answer any
17 questions.

18 CHAIRMAN SMITH: Questions of Mr. Hardecke?

19 Thank you, sir.

20 MR. HARDECKE: Thank you.

21 CHAIRMAN SMITH: I have a Krueger, Art Krueger.
22 Angel Krueger.

23 Sorry. I couldn't tell if it was an F or an R.

24 MS. KRUZEN: -- the two documents that I just
25 handed you --

1 CHAIRMAN SMITH: Would you identify yourself?

2 MS. KRUZEN: My name is Angel Kruzen,
3 K-r-u-z-e-n. I'm from Shannon County and I'm proud of it.

4 The two documents that I handed to you are both
5 from landowners. One in Shannon County, one in Reynolds
6 County. They both show examples of very poor gravel
7 mining.

8 The one is a business that has been
9 receiving -- they're customers that have been coming back
10 to their business over the years.

11 They've been receiving letters telling them
12 that they will not be back because of the pileup of gravel
13 in front of the facilities.

14 I also represent the Scenic River Stream Team
15 Association, which is a group of local -- it's citizens
16 from Texas, Shannon County and Howell County.

17 I am also the Vice-President of Missouri
18 Watershed Coalition.

19 The Missouri Watershed Coalition is a statewide
20 organization representing the interest of stream teams.

21 There are currently over 2,140 stream teams and
22 an estimated 40,000 individual stream team members.

23 I'm testifying today to urge you to adopt the
24 version of the in-stream gravel mining rules proposed by
25 the American Fisheries Society during the recent gravel

1 working mining group.

2 Gravel and sand mining in Missouri streams are
3 economically important commodities. However, fish and
4 other stream-based recreations are also important
5 activities in Missouri.

6 The rules I'm urging you to adopt were
7 previously in place and filed by gravel miners for
8 two years. There are no documented negative environment
9 or economic impacts to the Ozark region or to the mining
10 industry under these regulations.

11 I am very familiar with the challenges faced by
12 landowners with streams on their property.

13 I ask that you make your decision based on
14 factors that consider the long-term sustainability of our
15 stream resources and that your decision is to ensure that
16 we pass on our stream resources to our children and
17 grandchildren in no worse condition than they are today.

18 Adoption of the rules previously in place and
19 proposed by the American Fishery Society is a step in that
20 direction and will help protect our important part of
21 Missouri heritage, our clear Ozark streams.

22 Any questions?

23 CHAIRMAN SMITH: No questions.

24 Thank you very much.

25 MS. KRUZEN: Thank you.

1 CHAIRMAN SMITH: William Henderson.

2 MR. HENDERSON: My first question is, I wonder
3 whether that gal that just spoke here is single or not,
4 because she sounded like the kind of person I'd like to
5 marry, along with a clean stream program.

6 I'm probably the oldest person in this place,
7 and I've fished in Missouri streams for 60 years.

8 And some of the streams that I'm going to talk
9 about, I remember then -- I don't have pictures from then
10 and I don't have now, and, quite frankly, if I would have
11 known that I was going to come down here and say something
12 to you, I would have tried to get out and get some
13 pictures and bring them of current stuff.

14 Now, you've got just a volume of work to do to
15 decide which way to go, and I do believe, as my friend Bob
16 and some of the others said, that it's going to take a
17 very clear-cut record of what you can do and what you
18 can't and the figures of how wide this and whatever, and
19 then we'll have something to live with.

20 And they have to be good for both parties, both
21 sides of this thing.

22 About four years ago I first became involved in
23 this business of gravel mining. I -- I knew about it much
24 earlier. I knew about it 40 years ago, because they were
25 doing it on a place called Platinum Creek, and that creek

1 is all filled in now for the most part.

2 And you can't fish the areas that I did.

3 But there are other areas that were quite
4 fishable for a long period of time. And one of them was
5 called Big Creek. It's -- there is three of them listed
6 in your Missouri mapping book.

7 And this particular one happens to run into the
8 Current River, probably around -- oh, what is that? It
9 would be below Acres Ferry.

10 And this particular morning it was in the
11 spring, probably about a month later than it is right now.
12 I got up very early. And when I got to the stream site,
13 it was still almost slate gray. And I had some flies in
14 which I'd cut off the barbs because I believe in catch and
15 release, and I fished this particular hole.

16 There were about four in a chain, and with
17 about two feet of water running between each deep pool.

18 And this particular pool is about 100 feet
19 long, I guess, and I caught, believe it or not,
20 17 smallmouth bass.

21 I thought that was pretty good. I was ready to
22 go home, find my car and go home, end of the day.

23 And as I was walking down to the next section
24 and towards --

25 CHAIRMAN SMITH: Excuse me just a minute.

1 Folks, I would appreciate it if we would give
2 the same attention that was given to you while
3 Mr. Henderson is speaking.

4 Thank you.

5 MR. HENDERSON: These are just observations. I
6 don't know what you're going to do or how you're going to
7 do them, but I'll tell you this: Those streams were
8 raped.

9 As I went to the next hole to fish, I heard
10 some really heavy equipment. I looked back. And,
11 finally, two great big scoopers, about as big as you can
12 get, came down into the stream bottom up adjacent to that
13 place that I just fished, very carefully retained -- or
14 returned all of those -- those bass.

15 And then there was a little road adjacent to
16 it, and three pretty good-size trucks went up there with
17 huge hoppers, and they worked for the bigger part of the
18 day.

19 And I was fishing another part, and I was
20 wondering what they could have possibly been doing.

21 And so it started to rain. I walked back. I
22 thought I was going to take the time -- even though it was
23 raining, I was going to go up there and see what they was
24 doing.

25 That section of the stream, that stream no

1 longer existed, not that -- as it was not those deep holes
2 and not those bass that I had just caught. That was one
3 example.

4 I came back to -- Feather Craft is a shop in
5 St. Louis, where we get a lot of feathers for tying and
6 our equipment and stuff, and I asked people about it.

7 He said, oh, yes, there is a problem with this
8 stream mining for gravel and things.

9 And I asked a little more about it, but nobody
10 really knew too much or what could be done. I had no idea
11 about any laws or anything, but I knew that that place
12 didn't exist any longer.

13 The next spring I went to a place about a year
14 later -- I fished in between, but not this particular one.

15 I went to a place called Indian Creek that is
16 outside of St. Clair, Missouri. You take Highway 47 and
17 then K down to it. And it's a place that I had fished
18 probably since I was 12 years old.

19 I couldn't believe I had not been back since.
20 But I could not believe what I saw when I got down in that
21 water.

22 The far side of that bank was completely
23 stripped. It went from maybe four or five inches of water
24 for yards, and then up out of it and a big pile of gravel
25 all along, but it was stripped back 2 or 300 feet to the

1 trees.

2 It wasn't that way when I was a kid and I
3 fished it. And when my wife and I first went out there
4 and used to have picnics and take my kid and fish that
5 stream, it was a nice, clean, meandering stream.

6 And now here is this enormous stretch of
7 nothing but gravel on one side, save the other side. I
8 understand that's the law.

9 Where it runs into the Meramac on the other
10 side of that, they were doing the same thing.

11 In fact, there was a guy working down there
12 while I was fishing, and as far up that -- the Meramac as
13 you could see around that bend of that bridge was nothing
14 but 300 yards of gravel back up out of there, and smooth,
15 except for the piles that they made.

16 And I decided to walk upstream up the Indian
17 Creek to see what it might be like further up, you know.
18 Maybe they were doing something or trying to divert the
19 stream or whatever. I had no idea exactly what was going
20 on.

21 And the dozers had gone across that stream, and
22 they just simply gouged out again, let the water flow, I
23 suppose, where its natural run was.

24 And when I got to the other side, I could -- as
25 far up as I could see, and it made the next bend, there

1 was nothing but gravel, three-eighth inch, half inch, inch
2 type of Meramac aggregate, that igneous rock, dark brown
3 for the most part.

4 And there wasn't on that -- and they did
5 preserve the other side of the bank, and I understand
6 that's the law.

7 But there wasn't a leaf or a tree or any
8 greenery on that side of that bank.

9 And it just tailed right off into the water.

10 I caught a few fish, about like that
11 (indicating), not like the old days. And that's all right
12 too.

13 But by eleven o'clock the sun bore down, even
14 in the springtime, and it was so hot, and that rock solid
15 across there was so damn hot, you could hardly walk on it,
16 even with a pair of rubber boots.

17 And the water was just -- I like to refer to it
18 the way I like to refer to it. It was piss warm. It had
19 warmed up.

20 We'd had that much -- these things are a heat
21 sink, and they transferred, because they were -- they ran
22 right off into the water and they warmed the streams.

23 There is another famous stream everyone
24 probably that fishes knows about, the -- oh. I think of
25 the Courtois. It's the Huzzah.

1 And about a half mile down from Eagles Crest
2 Crossing you run into a hole that I'd fished many, many
3 times before earlier in my life, and probably runs 3 or
4 400 feet long, and probably wasn't as deep as 15 feet or
5 so.

6 And on one side there was gravel piled up, I
7 would say eight feet high. It was high enough that I
8 could not see directly back in over it.

9 It was cut on about a 60-degree angle, went
10 right off into the water. If you stepped on it and tried
11 to walk along the waterline, you would sink down 18,
12 20 inches, just like that, because there was no grout kind
13 of to hold it.

14 And the water there was quite deep, so you
15 couldn't walk along it, fish it.

16 I'm a fly fisherman and I like to walk the
17 streams as well. Well, you know, I guess somebody can
18 say, that's your tough rear end. Go somewhere else.

19 You couldn't walk up it because it kept coming
20 down, and I realized it wasn't made for me to climb up.

21 So I was tearing down something that somebody
22 had put up. It was just shaved off.

23 And you got up top of it and you couldn't get
24 to the edge and fish down on it because it was crumbling,
25 too, and I realized that that just was not to be.

1 But, again, it was just this rock, this same
2 stuff going in, and I bet it ran 700 feet. And I don't
3 know why it was there, but you could see the tracks of
4 where somebody had dozed it.

5 There are other places somebody mentioned --

6 CHAIRMAN SMITH: Could I ask you to conclude
7 your remarks, please?

8 MR. HENDERSON: My remarks are this: Mining
9 for these people is important. It's their livelihood.
10 The State has to have gravel and stuff, and property
11 owners have to be able to control, I suppose, what happens
12 to them.

13 I know if I was -- I was one down here, I'd
14 want this. But you're going to have to be very judicious
15 about how you pick your laws and what you're going to pick
16 that is best for both, and then stick to it and have
17 somebody to oversee it.

18 And you just heard something like 4 or 5,000
19 people and different organizations for fishing, I'm sure
20 each and every one of us, in turn, just like we, too,
21 serve on a jury, we would not mind going with some other
22 representative to examine these things and check on them
23 periodically, and know what the laws are to prevent what I
24 saw there.

25 Now, I have not seen every one that is down in

1 Missouri, and I'm not trying to condemn anyone else, but
2 that was really a mess. And I just -- I would hate to see
3 that for the rest of -- I'm not talking to me. I'm too
4 old. I was dead yesterday. But maybe my grandchildren or
5 great grandchildren, somebody, I'd like to leave them a
6 little more of what I saw when I was a kid.

7 Thank you very much.

8 CHAIRMAN SMITH: Thank you for your time.

9 MR. HENDERSON: I'm sorry. One more thing. I
10 hate to do this.

11 I go up fishing in Michigan, and who gives a
12 damn about Michigan, but the DNR up there is quite strong,
13 and they have a lot of land lateral to these streams.

14 And, believe it or not, you can go on that land
15 but you cannot go down into that stream except for places
16 that are designated. And that's plank cedar steps. You
17 can't even go outside the steps. You must go down there.

18 If you're caught, it's one hell of a fine.

19 They think enough of their watersheds that they
20 don't want the ecology disturbed and screwed up. So you
21 must go down around, come back up there or to the next
22 one.

23 And I just -- when I think of what I just saw
24 and I related to you and how careful they are, we need to
25 also protect both sides of the fence in Missouri.

1 Thank you.

2 CHAIRMAN SMITH: Thank you, sir.

3 Okay. Richard David Dellarman.

4 MR. DELLARMAN: My name is Richard David
5 Dellarman, and I'd like to read a little science here
6 about the rivers and try to get some scientific facts
7 going.

8 To start out with, the removal of sand and
9 gravel from streams and rivers.

10 The Texas County Management Plan of Missouri
11 acknowledges current information from the environmental
12 sciences. Standards of the Department of Natural
13 Resources guidance to remove sand and gravel will continue
14 to influence the decisions of Texas County.

15 Together we can work to achieve a sustainable
16 ecological resource and a workable economical future and
17 still maintain our domestic rights as a democratic
18 society.

19 This is on aquatic microbiology.

20 This is from a comprehensive text for students
21 in the allied-biological sciences, biological sciences,
22 environmental studies, animal science, forestry and
23 agriculture.

24 In the first four years of this publication,
25 more than 600 colleges used this book. And the

1 Introduction to Microbiology, copyright 1986, says: Most
2 aquatic life is found in the upper level of streams and
3 rivers. In Missouri's winter, many fish need depths of
4 approximately eight feet to survive slow-flowing streams
5 and rivers.

6 Microorganisms grow on stationary stream and
7 riverbeds. High amounts of nutrients found in water are
8 generally reflected by high amounts of microbiology.

9 Microorganisms called cyano-bacteria form algae
10 in the Lamnetic Zone found in the upper level of the
11 water.

12 This bacterium produces nitrogen for algae to
13 grow. Nitrogen is needed by all organisms to synthesize
14 their protein.

15 Cyano-bacteria are found in the roots of legume
16 plants, soybeans, beans, peas, peanuts, alfalfa and
17 clover. In land and in water there are thousands of
18 Cyano-bacteria found for life's existence. Algae supports
19 a population of bacteria, protozoan, fish and many other
20 aquatic life.

21 In freshwater many species of Cyano-bacteria
22 have the capacity to fix nitrogen from the atmosphere.
23 Even in waters of minimal industrial waste, blooms of
24 Cyano-bacteria can thrive.

25 That sounds like we should have a lot of fish

1 in the Ozarks.

2 Okay. One should consider if the needed amount
3 of nitrogen are in the streams and rivers. In the
4 Limnetic Zone, there should be algae and plant life to
5 feed fish, unless the stream and river's sand and gravel
6 sediment bed continues to move, as to relocate, by a swift
7 current of water.

8 This movement inhibits plants and algae to
9 attach themselves to the streambed and riverbed.

10 Microorganisms are inhibited to attach
11 themselves to the micronutrients when both are free
12 flowing in a fast current.

13 If the Limnetic Zone are not deep enough for
14 fish to survive -- okay.

15 No. 2, Limnetic Zone are not deep enough for
16 fish to survive.

17 No. 3, a new pathway of stream and river's flow
18 creates a new streambed or riverbed that does not have
19 nitrogen-producing bacteria yet.

20 There is a toxic manufactured chemical leak or
21 industrial produced acid rain killing the bacteria and/or
22 fish.

23 These are some of the reasons why there might
24 not be fish in there.

25 Now, to back that up, that's -- I belong to the

1 Engineers 1138 Engineering in the Army, and retired about
2 seven years ago. I was a trained NCO and I taught about
3 this type of subject.

4 The following text was edited from the Army
5 Engineering Manual about water drainage. It explains the
6 effects of waterflow in creeks, streams and rivers.

7 The following guidance is used for the
8 maintenance of riparian areas to preserve the cropland,
9 pastureland, gravel roads, fords, causeways and bridges.

10 No. 1, when a riparian area becomes too
11 shallow, fish, reptiles and animal predators of fish will
12 either die or try to relocate.

13 Rain storms fill creeks, streams and rivers
14 with debris, thereby creating shallowness.

15 When these riparian areas become too shallow,
16 rain storms can channel out new water channels, thereby
17 damaging pastures, cropland, structures and roads.

18 That is some of -- there is some of those
19 pictures in there on that.

20 A uniform flow of water is fashioned when the
21 height of water is parallel to the bottom of the channel,
22 as found FM5-335, page 6-6.

23 When water channel radius is increased, the
24 velocity decreases.

25 I'm sorry. When water channel radius is

1 increased, the velocity decreases the speed of the water.

2 When the water channel is widened and the
3 bottom is deepened, the radius is increased.

4 This is page 6-20.

5 Water flowing over land carries sediment into
6 water channels. This sediment fills the deeper areas of
7 this channel, thereby decreasing the channel radius and
8 increasing the current.

9 When the water velocity exceeds the maximum
10 soil resistance, the soil and the gravel bank will erode,
11 thereby endangering the water channel itself.

12 Erosion can be prevented by lessening the
13 velocity of water below the soil erosion velocity.

14 Therefore, it would be advisable to take out
15 all obstacles that make rivers narrower, producing faster
16 currents.

17 To increase the radius will enable a greater
18 volume of water and a slower current that will retard the
19 erosion and flooding.

20 And I got a picture handed out when I was
21 talking about this. And as far as managing this type of
22 thing, I called maintenance. Take out all sand -- take
23 out all of the sand and gravel referred to as "sand bars"
24 from creeks, streams and rivers without disturbing the
25 soil erosion line, nor contaminating the soil and water,

1 of course. They don't want to dump oil in there.

2 All townships or areas stewardships are to
3 oversee this maintenance. All mining contractors are to
4 get permission from these townships or stewardship
5 personnel responsible of this function before every time
6 they are to mine gravel.

7 Any questions?

8 CHAIRMAN SMITH: Any comments or questions?

9 Thank you, Mr. Dellarman.

10 That completes this except for the exception of
11 Mr. Dunn.

12 I'm sorry.

13 MR. STUCKY: Norm Stuky.

14 Mr. Chairman, I guess because of my present
15 handicap, if I could just give it here. I think I can
16 speak loud enough, please.

17 Again, my name is Norm Stucky. I'm a Fishery
18 Division Administrator for the Missouri Department of
19 Conservation.

20 Just a few brief comments.

21 First let me say that the Department clearly
22 recognizes that the sand and gravel resources in our
23 streams is a critically important commodity.

24 It is not our intent to curtail the mining of
25 this resource, nor do we subscribe to the offheld

1 misconception that one must exclusively select gravel or
2 stream resources, to the detriment of the other.

3 The Department of Conservation further
4 understands that efforts to establish excavation standards
5 by the Land Reclamation Program will not affect, one,
6 individual landowners mining for personal use or, two,
7 political subdivisions using their own equipment and staff
8 to obtain minerals for their own use.

9 The Department of Conservation supports the
10 establishment of sound, enforceable excavation standards
11 for all commercial operators.

12 While minor adjustments may be appropriate and
13 necessary, we support adoption of the basic language of
14 the preferred excavation standards or performance
15 requirements contained within DNR's January 21, 2003
16 briefing document.

17 Taking this step would allow in the months
18 ahead for additional input, further discussion on areas of
19 concern, and hopefully the final crafting of regulations
20 by the Land Reclamation Commission that are enforceable
21 and beneficial for both industry and the environment.

22 In summary, efforts to establish excavation
23 standards and in-stream mining regulations are supported
24 and would, one, make progress toward addressing the
25 existing lack of consistency associated with mining

1 activities and, two, provide clear extraction standards to
2 protect Missouri streams.

3 We appreciate the opportunity to offer these
4 comments.

5 CHAIRMAN SMITH: Thank you, sir.

6 Sorry.

7 Now, Mr. Dunn. I'm sorry.

8 MR. DUNN: Mr. Chairman, members of the
9 Commission, thank you for having the meeting today.

10 I'm not going to talk very long today. I would
11 like to bring up one or two things, if I could, please.

12 Mr. Chairman, you spoke earlier that Senate
13 Bill 360 was basically mute as such, I believe is the way
14 that you thought.

15 At this point Senate Bill 360 is still in
16 committee and has not been voted out of committee.

17 CHAIRMAN SMITH: I didn't mean to infer that it
18 was not moving ahead. There has been some consolidation.

19 MR. DUNN: Some of the language that was in
20 Senate Bill 360 was amended on to Senator Klindt's bill,
21 Senate Bill 36, for those people that are keeping up or
22 watching the different bills. That is where that is.

23 When the senator had the meeting in her office
24 between Department of Natural Resources people, the
25 Department of Conservation, Farm Bureau and such, the

1 5,000 tonnage numbers came from that meeting. That is
2 where Senator Steelman came in with the recommendation of
3 the 5,000 tons or less.

4 And in doing that, she put the wording
5 together -- we put the wording together for the language
6 for the bill.

7 If I can ask that you turn to page 3 of the
8 fiscal note that I just gave you all, and let me read the
9 top part, if I could.

10 Officials with the Department of Natural
11 Resources assume this proposal would exempt any sand or
12 gravel operator that mines less than 5,000 tons of gravel
13 per year from regulation and licensing.

14 Currently there are approximately 130 operators
15 who remove less than 5,000 tons of sand and gravel from
16 streams annually. Each permit costs \$300. 100 times \$300
17 equals 39,000.

18 The cost for administering, permitting and
19 enforcing these permits averages \$500 each. 130 times \$500
20 equals \$65,000. Therefore, the Department assumes there
21 would -- that there would be a net cost avoidance, or
22 loss, of \$26,000 as a result of this proposal.

23 We've had the guidelines in place for three
24 years. If we've had 130 operators for those three years,
25 we have lost \$26,000 times three in the last three years

1 by permitting small sand and gravel operators \$500 or
2 less.

3 As Mr. Larson mentioned earlier, the numbers
4 that we have are 332 sites, 257 in-stream mining sites.
5 That number is different than the number that was -- that
6 the Legislative Research Committee -- Legislative Research
7 Oversight Division, when they got their information on how
8 to put the fiscal note together, their number was that
9 there was 130 smaller ones.

10 Talking with people from DNR, we have been told
11 that probably the larger gravel operators take out 70 to
12 75 percent of the gravel that is taken out of the
13 in-stream operations.

14 Well, if that's the case, if there is
15 257 in-stream mining sites, there is probably a lot more
16 than 130 of the smaller operators. So this \$26,000 a year
17 loss could be significantly more than \$26,000.

18 As a Commission, your-all job is basically
19 looking into and keeping up with land reclamation.

20 Senator Sarah Steelman's job, when she was
21 voted in as State senator, was to watch over the interest
22 of the people of the State of Missouri, both the people in
23 the big cities, the people in the little cities, the
24 people on the farmland, owners, all of them, in one state.

25 In doing that, she asks today that you take

1 into consideration the small operators, the cost of the
2 fees.

3 The gentleman a while ago spoke of -- said, you
4 know, make your rules, make your guidelines, or what have
5 you, and stand by them.

6 Well, three years ago we had guidelines that
7 was put into place, we stood by them and, as such, we've
8 lost \$26,000 or more a year by doing that.

9 This year we're in a budget crisis, where we're
10 trying to figure out where to find the rest of a billion
11 dollars come June the 31st. We're looking at 750 to
12 100 million dollars again in deficit for fiscal 2004.

13 This one operation right here could make a
14 significant appearance on that budget right there.

15 If we would eliminate the small permits, the
16 5,000 tons or less, \$26,000 would produce someone out
17 there on the outside a good yearly job salary.

18 It's something that we're losing money on
19 anyway. Why continue to go forward with it in any
20 respect?

21 The only -- the only thing that the senator
22 would like to add to this is she wants to thank you all
23 for having your meetings.

24 This is something that has drawn out a lot
25 longer than I know the Commission thought it would or

1 wanted to. I know the Director, Mr. Coen, thought that it
2 would -- we'd never see this many days go by before this
3 was put into effect or changed.

4 But she wants to thank you all for having the
5 meeting. She wanted to thank the people that served on
6 the work study groups.

7 Senator Steelman has been involved with this
8 particular process for about a year and a half now, and
9 she is in hopes of this, that it will come to a conclusion
10 pretty quick.

11 So thank you for your time.

12 If you have any questions, I'd be happy to
13 answer them for you.

14 MR. COEN: I have one thing.

15 Jim, I know you don't really understand a lot
16 of times the difference between the sites and permits, but
17 the fiscal note is still correct.

18 What Mike quoted earlier was sites. This talks
19 about permits. There are multiple sites on each permit
20 sometimes. So that is -- that's why the number looks
21 different. 130 permits, but covers 200 and some sites.
22 That's the difference.

23 MR. DUNN: But \$26,000 lost the last three
24 years is correct?

25 MR. COEN: That's correct, yes.

1 MR. DUNN: Anything else?
2 Thank you very much.
3 CHAIRMAN SMITH: Thank you.
4 Is there anyone else that would like to speak?
5 Comment?
6 Yes, ma'am.
7 MS. HOLLOWAY: Not to speak, but if I might ask
8 a question.
9 Would the Commission be making any statement
10 today as to whether --
11 CHAIRMAN SMITH: I'm sorry?
12 MS. HOLLOWAY: Would the Commission be making
13 any statement as to what the next step in the process
14 might be, what might happen tomorrow?
15 CHAIRMAN SMITH: We're going to move into that
16 in just a minute, Ms. Holloway.
17 I want to see where the Commission wants to go
18 with this.
19 Ms. Holloway presented my next item on the
20 agenda, which is, where does the Commission want to go and
21 how fast do we want to move forward on this.
22 An agenda has probably been published for our
23 Commission meeting tomorrow. So I think that would
24 possibly conclude it.
25 It will take us, what, a couple of weeks to get

1 the court reporter --

2 MR. COEN: We can't really dictate to her how
3 long it will take to do this, but I'm sure it will take a
4 couple of weeks.

5 And I guess my proposal for the Commission to
6 consider is that we get that -- that document, along with
7 all of the other materials, and allow the program to
8 provide the Commission kind of a package summary of where
9 we are, and then hopefully make that easier for you to
10 decide.

11 CHAIRMAN SMITH: Does anybody want to comment
12 on that, as far as how to move forward -- or let's see.

13 This is April. Our next -- March. Our next
14 meeting is May.

15 MR. COEN: May the 22nd.

16 CHAIRMAN SMITH: May the 22nd.

17 Do you think that will give adequate time to
18 review the comments and the additional information we got
19 and come to your own personal decision on that without
20 further hearings?

21 COMMISSIONER ROSS: Mr. Chairman, that sounds
22 reasonable to me, and I would hope that there would be an
23 agenda meeting at the May meeting and we make a decision.

24 CHAIRMAN SMITH: I think that's pretty well --
25 put it on the May agenda and ask the Commission to come

1 prepared to vote on that issue at that point in time.

2 COMMISSIONER GARSTANG: Mr. Chairman, the only
3 caveat to that might be is getting the transcript from
4 today.

5 CHAIRMAN SMITH: Okay.

6 Again, I want to express mine and the
7 Commission's appreciation for the presentations today. I
8 think they were well informed.

9 There was a lot of emotions and a lot of
10 feeling put into it, but I think the courtesy that was
11 shown from both sides was very good for all of us and
12 allowed us to have a good meeting and a good presentation
13 on this.

14 We appreciate your input. I will tell you
15 that, you know, personally that, I mean, it was
16 interesting and it will have an impact as far as how I
17 make a decision.

18 Yes, sir.

19 MR. AUBUCHON: My name is Max Aubuchon.
20 Yesterday --

21 CHAIRMAN SMITH: Would you spell that for her,
22 please.

23 MR. AUBUCHON: A-u-b-u-c-h-o-n.

24 I would like to ask Mr. Larson a question here.
25 How many of those A, B and C streams, how many

1 of those permits are on each one of these streams?

2 MR. LARSON: How many permits in each one of
3 those classes? Is that what you're asking?

4 MR. AUBUCHON: Yes.

5 MR. LARSON: It would be difficult for us to
6 say because we don't really track the sites on the class
7 of the stream. We do identify the site that the stream is
8 on, but we don't say don't say that Roubidoux Creek is
9 Class B or anything like that.

10 I mean, we have the stream names but not the
11 classes. I really can't answer that one.

12 MR. AUBUCHON: Thank you very much.

13 CHAIRMAN SMITH: Okay. All right.

14 With that, thank you all for coming and thank
15 you for your input on this, and on our May meeting we'll
16 have a decision.

17 (HEARING ADJOURNED.)

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STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Patricia A. Stewart, Notary Public within
and for the State of Missouri, do hereby certify that I
was personally present at the proceedings had in the
above-entitled cause at the time and place set forth in
the caption sheet hereof; that I then and there took down
in Stenotype the proceedings had and produced with
computer-aided transcription and that the foregoing is a
full, true and correct transcript of such Stenotype notes
so made at such time and place.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal on this 2nd day of May, 2003.

My commission expires January 26, 2007.

Notary Public - State of Missouri
(Commissioned in Cole County.)



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March 14, 2003

Land Reclamation Commission:

We would like to take this opportunity to thank the Land Reclamation Commission and the DNR Land Reclamation staff for the opportunity to provide input, concerns and practical solutions to the difficult issue of incorporating "in-stream mining" guidelines into regulations. The workgroup certainly consisted of many diverse opinions and it was readily apparent a consensus would never be reached. Should it be deemed necessary to move the guidelines to rules, practical, workable recommendations changing the existing guidelines were developed with the approval of Mo. Dept. of Conservation as well as DNR staff and approved by a majority of the group. However, **only the guidelines approved by the majority of the workgroup are acceptable to meet the goal of allowing mining while protecting streams and again only if it is determined that these guidelines should become rules.**

We were told repeatedly these guidelines need to be moved to regulations to protect our streams. I am confused. MODOT and our local county as well as all other counties in the state, are allowed to remove gravel without any regulations. I totally feel our local governments and MODOT should be able to utilize the gravel resources in our county to maintain our roads, however as a producer, I feel if these actions are truly being taken to "protect our streams" - how can the impact on our streams be any different whether it is gravel mined for "commercial use" or local governments. It has been said property owners are exempt from these laws as long as the gravel is not sold. What property owner would want to pile gravel on his property, not allowed to sell a resource off his land which he owns, and again if he is not held to these same standards, how are our streams protected? I do not understand the dichotomy of this ruling. The land is the property owners and they should have the right to make the choices they feel are best for their property - after all they are the ones who pay the taxes, maintain the land year round, year in - year out. What's next for our landowners? As one land owner speculated what if it is next decided which trees a landowner can cut on their property. Would landowners be allowed to cut only selected trees and only if they agree to pile the trees on their property and not sell the timber? Would DNR set the guidelines for harvesting trees and then collect a fee from the loggers for cutting timber on private property? How is this scenario any different than attempting to control gravel mining on private property?

SCIENCE AND BACKGROUND:

So exactly what is the science in gravel removal? Since there have not been any studies conducted in our part of the state, why wouldn't we ask for the science to back the need for regulations? After four days of meetings, I am still concerned that as an industry our vast experience and common sense approach of working in the streams of our geographical region of the state seem to bear little credibility with certain groups. However, we were expected to accept point blank scientific studies from other states and even other continents. Our industry has been under guidelines since the early 90's and I find it disconcerting that voluntary actions and the filing of our "stream management plans" carry so very little credibility as being effective. Yet we were always under the impression we would not be allowed to conduct "in-stream mining" without such permits. Since the early 90's we have repeatedly seen photos of the problems incurred at Linn Creek. I find it interesting that in the DNR presentations of their concerns regarding area streams, pictures of MDC's practices at Potter Creek are not included. Yet when we ask about MDC's practices in Potter Creek (Texas County) which cost the state taxpayers considerable money and allegedly threatens a bridge on Hwy. 63, we were told that was a "learning experience." Also, after the spring floods, it is said MDC maintains Montauk State Park by excavating gravel below the water line. I seriously doubt that what is done by MDC is detrimental to the trout and yet this seems to set a double standard. Why is it ok to go below the water line in streams if done by MDC but not if it is a producer or private property owner? Mr. Coen spoke of one complaint regarding an in stream gravel producer and he also noted DNR

"WE STRESS QUALITY & SERVICE"

could never prove that the actions of the gravel producer had caused damage to the stream. I would also remind the commission that many natural events such as the spring floods of 2002 can do more "natural" damage to a stream which certainly is beyond the producer's control. Absolutely no DNR regulation or rule will ever cover such natural consequences of mother nature.

BUFFER ZONES:

I know buffers are the #1 concern of many producers - large or small. When we volunteered for this committee, we had hoped our years of experience and concerns would be heard with some understanding of the difficulty in establishing state-wide guidelines for a geographically diverse state. As we live at the head of many of the streams, our gravel bars are smaller- we cannot leave a 25' buffer as many of our bars are not large enough. A 25' buffer is often wider than some of our bars. For many of our gravel bars, if the buffer is set at greater than 5-10 feet, then the stated goal of establishing rules which allow gravel excavation while protecting streams will not be met. Many of our bars would immediately become inaccessible. Our goal as producers is to prevent turbidity in our streams and we find that small buffer zones can achieve this goal. This buffer issue becomes even more interesting if you are mining on a normally dry creek-particularly if the goal is to protect the stream. The rule which allows for variances to be granted by DNR personnel is not acceptable either as we feel it could become too subjective. You could conceivably have one staffer ok a buffer and then with staff change, political climate change, etc., a different staffer could reject the buffer size. As a producer, you would have little recourse at that point because of specific stated buffer size in the rule. It was pointed out one could appeal a decision - but who does the appeal process go to - DNR - not a dependable solution in our mind as one is making future plans regarding capital intensive investments. Much thought was given by producers in working with MDC and DNR staff to establish acceptable wording regarding buffer zones with the goal of being flexible to take into account the diversity of streams in Missouri. We feel our language accomplishes this goal, and is the only workable solution regarding buffer zones.

ECONOMICS:

In response to one of the Land Reclamation Commissioner's question regarding our fees, I would like to share some of our personal background. Since the early 80's we have worked with DNR, MDC, and the Corps of Engineers in regards to in-stream mining. Our fees began at I believe \$100 and a couple of pages of paperwork. This year, 2003, with the fee increases, our company will probably pay DNR the maximum fee of \$2500 to excavate gravel from private landowner's streams, many of which are dry. (As we are over the 5000 ton limit, I will pay the basic \$350 permit fee and either \$150 or \$300/site depending on the length of time the site is operated.) Most of our gravel bars are small and because quite often several landowners are involved, our fees substantially increased as did our paperwork. Under the current guidelines, our paperwork for a new site includes a 4-5 page stream management plan per site (landowner), signed consent by the property owners to allow DNR to inspect our excavation, USGS approved maps, with 4 weeks of public notices in local papers followed by a 30 day comment period, certified letters sent to each adjacent landowner and county commissioners. This recent fee increase of up to \$2500 paid to DNR to excavate on private property has not been explained and has been quite a shock to many of us as producers. Incidentally, when the Corp oversaw the same program, our annual fee was \$100 for all our sites. Ultimately, as you are aware, the actions of the Corps of Engineers were found to be unconstitutional by the U.S. Supreme Court. I would ask why are the same guidelines for non-navigable streams which have been deemed unconstitutional being considered by the state of Missouri"?

In all of these discussions, the general consumers in our area have not been of concern or represented. In our area of the state a shortage of sand already exists. If these guidelines are imposed as written without modification, we will be traveling to Arkansas and Oklahoma or across the state to Dexter for sand for our concrete. Our mileage would easily be 200+ miles per round trip at a minimum. With increased fuel prices, concrete would jump \$10-15/yard - in an area of the state which is already economically stressed and begging for jobs. We like to support and create jobs in our communities whenever possible and to keep as much money as we can in our own economically distressed communities and state. It makes no sense to take actions to decrease the jobs in our communities or send money to other states. In our small company, the implementation of the rules as originally written could mean the loss of 4-5 jobs, men who support

families in our hometown. Missouri is under a terrific tax crunch and our highways and bridges are already among the worse in the nation. How can DNR justify the added cost to MODOT, our local county and city municipalities and ultimately the Missouri taxpayer? These increases would be felt in every road, bridge, and public project in our area. Additionally, any concrete, sand and gravel purchased for homes, farms, schools, churches, businesses, etc would be passed on to the consumer. That's just simple economics. Also of significance, should the guidelines become rules, how does DNR propose to pay for additional staff to equitably enforce such rules? The cost of implementing and enforcing these rules has not been discussed or determined to my knowledge.

CONCLUSION:

From certain members of the workgroup, I am offended that gravel producers and property owners are characterized as uneducated, greedy, anti-environmental consumers. We choose to live in the Ozarks because we love it. We include many college educated individuals, a certified surveyor, farmers, a licensed social worker, hard working employees, a former state representative, accountants, former newspaper owners, small business owners, farm bureau members, county commissioners, etc. We and our employees and families love to fly fish, bass fish, gig, hunt, hike, canoe, horseback ride, and just about any activity that can be enjoyed outdoors. I resent the inference that we do not care about the land. Since the early 50's our family has been in the gravel business. If we were doing damage to our neighbors' streams and farms, we would not be in business today, period. We would not be repeatedly called back to our streams by our neighbors. We know the streams in our area and are aware of their evolution and we care about the loss of favorite fishing or swimming holes which have filled in with gravel.

In closing, we as gravel producers along with property owners, county commissioners, (supported by a resolution by county commissioners of the state) Farm Bureau members as well as many others have spent many long hours traveling to Jefferson City and taking time away from our businesses, farms, families and county governments to express our concerns and provide input. We spoke for hundreds of small producers, consumers and property owners who could not afford to attend. I certainly hope our recommendations and concerns are validated by the Land Reclamation Commission's consideration of our situation. Remember we were told the goal was to allow gravel mining while protecting the streams. **The set of changes to the guidelines which were supported by the majority of the committee is the only way it can work for our area of the state.** I certainly hope we were not just used to say -"see we had producers' input on developing and implementing a set of acceptable rules." As you vote, please remember our concerns and think how you would feel if you lived and worked where we do.

Sincerely,

PETERSON GRAVEL & READY MIX, INC.



Gary & Cindy Peterson

cc: Senator John T. Russell
Senator Sarah Steelman
Representative, Van Kelly
Wright County Commission, Rex Epperly

Ron Hardecke - February 18, 2003

Impacts of Gravel Accretion and Streambank Erosion

1. Soil Erosion - The erosion of streambanks and the riparian corridor causes the deposition of silt and gravel directly into the stream channel.

The erosion of the streambanks causes the loss of the riparian corridor and leaves a raw bank that will erode further.

In order to heal the raw bank, the pressure must be relieved by removing the obstruction (gravel and vegetation) from the existing stream channel.

2. Fish Habitat - The accretion of gravel in the existing stream channel has severely reduced the waterpool in the streams which reduces the habitat.

3. Water Quality - When stream banks erode, the soil and gravel are placed directly in the stream.

Solution: Government policy should allow and encourage landowners to use preventative maintenance to prevent streambank erosion and to allow for the repair of existing bank erosion by the removal /and or relocation of gravel, vegetation, and debris from the existing channel.

By using the on site material (willows and gravel), repairs can be made to existing erosion sites at a more reasonable cost than by bringing in material. Also by using live vegetation for the repair the recovery time can be reduced by several years.

Ladies and gentlemen of the Commission,
My name is Robert Temper and I am here today representing the Ozark Fly Fishers.

STRONG MEASURABLE REGULATION

This is the answer. It protects the resource and provides guidance to the operators and the agency. A win-win scenario.

Excavation standards must apply equally to everyone.

The best way to do this is via regulation

Visible to everyone

Applies to everyone affected

Allows variances but doesn't start with differences

Guidelines imply variability – regulations do not.

They must be fair to all concerned – industry and the resource

Measurable standards are appropriate to everyone

The operator knows what is required

The agency knows what is enforceable

The public doesn't have to guess about what it sees as potential violations

Whatever rules you select -

you need a total package to support the intended effect.

The Working Group proposal is not easy to read but taking the vote as an absolute does not get a workable package.

Working Group Item # 2 as voted on by the majority in the working group is not measurable.

"A buffer zone of adequate width to prevent turbidity and ensure the biological, physical and chemical integrity of the water during times of operation shall be left..."

What does that mean?

If we asked everyone in this room what that meant,

how many different interpretations would we get?

How many would we get just from the commission?

Option 2 – "An undisturbed buffer of 20 feet shall be maintained between the removal area and the water line at the time of excavation..."

That is clear. 20 feet is measurable. The equipment operator has an idea what 20 feet represents without measuring it. It is enforceable and it is reasonable. Might there be a need for a variance? At times that may be necessary, but you have a starting point if you select a measurable number. Everyone has the same measurable standard.

STRONG MEASURABLE REGULATION

Statement of Position In-Stream Gravel Mining in Missouri

The undersigned organizations have agreed to the following statement regarding in-stream gravel mining in Missouri.

1. In-stream gravel mining has the potential to damage fish and wildlife habitats, recreational resources, public infrastructure and private property. These effects have been well-documented in the scientific literature.

2. In-stream gravel mining has, in fact, damaged fish and wildlife habitat, recreational resources, public infrastructure and private property in the State of Missouri. The Missouri Departments of Natural Resources and Conservation have documented numerous examples of this damage in many regions of the state.

3. In-stream gravel mining is prevalent in many regions of Missouri and therefore has the potential to cause harm to many of the state's streams. Many of the negative effects of gravel mining go unnoticed by regulatory agencies because they occur in locations that are difficult to monitor.

4. The Missouri Land Reclamation Act gives the Land Reclamation Commission specific authority to regulate commercial gravel mining. The Act exempts private individuals and local governments from its provisions.

5. Many commercial gravel mines are not following MDNR's existing "guidelines" that set standards for such operations. The U.S. Geological Survey estimates that less than 25 percent of the gravel mining sites in Missouri have a permit from MDNR.

6. The Land Reclamation Commission (through MDNR) is the agency primarily responsible for protecting Missouri's streams from the negative effects of irresponsible gravel mining. Because of recent court decisions, the U.S. Army Corps of Engineers does not have the authority to regulate most aspects of gravel mining.

7. The Land Reclamation Commission has indicated a need to incorporate its current gravel mining "guidelines" into the code of state regulations. Putting the guidelines into state regulations would make them enforceable by MDNR. Incorporating the guidelines into state regulations will not affect those miners that already comply with the guidelines.

8. The Land Reclamation Commission should adopt a new regulation in the year 2003 that incorporates the current gravel mining guidelines. To the extent the regulation deviates from the current guidelines, it should follow the recommendations of a scientific organization such as the American Fisheries Society.

9. The new regulation should include, at a minimum, standards for buffer zones, depth of excavation, protection of vegetation, storage of hazardous materials, outstanding state and national resource waters, and endangered species. To the extent that different proposals have been put forth on these issues, we believe that the American Fisheries Society's position should be adopted because of that organization's scientific expertise on this subject.

10. The Land Reclamation Commission owes a duty to the citizens of Missouri to protect the state's natural resources from overuse and abuse. This duty requires that the Commission strike a balance between property rights and the protection of natural resources for the enjoyment of all Missourians. The undersigned organizations believe the principles enunciated herein strike the appropriate balance between these two concerns.

MISSOURI COALITION FOR THE ENVIRONMENT

MISSOURI SMALLMOUTH ALLIANCE

MISSOURI STREAM TEAM REPRESENTATIVE

OZARK FLY FISHERS

OZARK RIVERKEEPERS NETWORK

SIERRA CLUB – OZARK CHAPTER

SOUTHWEST MISSOURI FLY FISHERS

TROUT UNLIMITED – OZARK COUNCIL

American Fisheries Society's Recommendations to the Department of Natural Resources' Land Reclamation Commission

Variations from the existing DNR Guidelines are in **Bold Print**.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 40—Land Reclamation Commission Chapter 10—Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

10 CSR 40-10.020 Permit Application Requirements

(D) A plan of operation and reclamation which meets the requirements of 444.760--444.790, RSMo.

1. The operation plan for surface mine operators shall include:
 - A. A brief description of topsoil availability, removal and storage as outlined in 10 CSR 40-10.050(6);
 - B. A brief description and location of spoil placement and disposal;
 - C. A brief description of handling of acid materials, if applicable; and
 - D. A brief description of the location and arrangement of the pit if not delineated clearly on the map submitted with the application.
2. All applications shall contain a reclamation and operation plan for the lands and water within the proposed permit area.
3. The reclamation plan shall include, at a minimum:
 - A. A list of species used for reclamation and the seeding/planting rates;
 - B. Methods and timing of seeding/planting;
 - C. If required by the commission, references to support revegetation methods;
 - D. A brief description of the grading, topsoiling and revegetation schedules as outlined in 10 CSR 40-10.050(10); and
 - E. The land use that area is to be reclaimed to and the acreage of each.
4. Commercial In-stream operators must describe what measures will be taken to minimize impacts on the stream environment, that is, **how they will follow the requirements of 10 CSR 40-10.050 (14).**

10 CSR 40-10.050 Performance Requirements

(14) In-Stream Gravel Removal Requirements.

(A) Commercial Operations that conduct sand and/or gravel removal within the stream banks must comply with the following requirements.

(B) The following requirements are designed to protect water quality while allowing for the excavation of sand and gravel from riparian environments. Upon request of the applicant, the program may establish site specific variances to address conditions that may occur at individual locations.

1. Excavation of sand or gravel deposits shall be limited to deposits in unconsolidated areas containing primarily smaller material (at least 85 per cent of the material is less than three inches in diameter) that is loosely packed and contains no woody perennial vegetation greater than **one inch in diameter, measured at six inches above ground. In absence of bank vegetation, the buffer will be maintained between the removal area and the base of the high bank.**
2. An undisturbed buffer of 20 feet shall be maintained between the removal area and the water line at the time of excavation, and between the removal area and bank vegetation greater than **one inch in diameter, measured at six inches above ground. In absence of bank vegetation, the buffer will be maintained between the removal area and the base of the high bank.** Upon request of the applicant, width of buffer areas may be modified after an on-site visit determines that a smaller width buffer area would not significantly impact the biological, physical, or chemical integrity of the water resource.
3. An undisturbed buffer of **100** feet wide shall be maintained in an undisturbed condition landward of the high bank for the length of the gravel removal site. Disturbed areas in this riparian zone shall be limited to maintained access **road** for ingress and egress only. No clearing within this riparian area is authorized in association with work authorized by this permit.
4. Sand or gravel shall not be excavated below water elevation at the time of removal. If the stream is dry at the time of excavation, excavation shall not occur deeper than the lowest undisturbed elevation of the stream bottom adjacent to the site
5. **Stream channels** shall not be relocated, straightened, cut-off, shortened, widened, or otherwise modified. A stream channel is defined as that area between the high banks of the creek where water is flowing, or in the case of a dry stream, where water would flow after a rain event.
6. Within 30 days of the removal of excavation equipment from the site, streambank areas disturbed by the removal operation or support features shall be revegetated or otherwise protected from erosion. For long-term operations (longer than 30 days) or for sites that will be periodically revisited as gravel is deposited, access points shall be appropriately constructed and maintained such that stream banks and access roads are protected from erosion.
7. Any aggregate, fines, or oversized material removed from the site shall be placed **beyond the high bank**, on a non-wetland site that has been approved by the landowner. No material, including oversized material, that results from excavation activity may be stockpiled or otherwise placed into flowing water or placed against streambanks as bank stabilization **unless specifically authorized by a state or federal permit.**

8. All sand or gravel washing, gravel crushing, and gravel sorting shall be conducted **beyond** the high bank, in a non-wetland area and away from areas that **frequently** flood, such that gravel, silt, and wash water that is warm, stagnant, or contains silty material cannot enter the stream or any wetland.

9. Spawning season restrictions shall be followed.

10. Vehicles and other equipment shall be limited to removal sites and existing crossings. Streams shall be crossed perpendicular to the direction of the stream.

11. Fuel, oil and other wastes and equipment containing such wastes shall not be stored or released at any location between the high banks or in a manner that would enter the stream channel. Such materials shall be disposed of at authorized locations.

12. Sand and gravel operators that require a permit for storm water runoff and/or gravel washing shall secure such permit from the appropriate Department of Natural Resources, Regional Office prior to initiating operations.

Unanimous recommendation by working group to drop item "12" from Guidelines.

13. In-stream sand and gravel operations are prohibited from those waters listed as "Outstanding State Resource Waters" or "Outstanding National Resource Waters" (10 CSR 20-7.031).

14. If any part of the authorized work is performed by a contractor or other party, these conditions shall be discussed with the contractor or party. A copy of these conditions shall be given to the contractor or other party involved in the excavation activities. **The permittee remains responsible for the conditions of the permit.**

15. **The Land Reclamation Program shall coordinate** with the Missouri Department of Conservation and the U.S. Fish and Wildlife Service as to the presence of State and Federal Threatened and/or Endangered Species in the stream reach where mining occurs or will occur in order to avoid jeopardizing the species' continued existence or destroying or adversely modifying the habitat of such species **in the permitting process.**

Speaker Card

Please identify the name of the speaker:

Loel Vance

Please identify the agenda item:

Gravel Mining Regs

Do you prefer to speak (Circle One):

First

Middle

Last

Please state the question or comment:

Statement attached for official record

THANK YOU

STATEMENT TO LAND RECLAMATION COMMISSION

My name is Joel Vance. I have been an outdoor/environmental/nature writer for 35 years and a canoeist and river angler for longer than that.

I have seen first hand the damage that gravel mining can do to a stream. Missouri's river resources are a far greater economic boon to the state than are gravel mining operations. It would be false economy, not to mention environmentally outrageous to allow unregulated gravel mining in any form.

I fully support the compromise measures endorsed by the American Fisheries Society and hope that this commission has the wisdom and the courage to adopt them.

A handwritten signature in black ink, appearing to read "Joel Vance". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Missouri Chapter of the American Fisheries Society Statement to the Missouri Department of Natural Resources Land Reclamation Commission regarding Excavation Rules for In-stream Gravel Mining (March 26, 2003)

Good morning/afternoon. My name is Duane Chapman and I am here on behalf of the Missouri Chapter of the American Fisheries Society, which represents nearly 200 professional scientists who work on many of the economic, social, and scientific issues involving our state's valuable aquatic resources. We thank you for the opportunity to briefly discuss the need for in-stream excavation rules that strike a balance among competing resource users while protecting our streams for the long-term benefit of our citizens.

Gravel and sand mined from Missouri's streams are economically important commodities, amounting to \$41 million in direct value in 1995. However, fishing and other stream-based recreation also are economically important activities in Missouri. Stream fishing alone accounted for \$170 million in direct expenditures in 1996. This figure does not include the additional economic activity generated by canoeists, swimmers, hunters, and other stream recreationists. While some miners understandably have concerns about rules that may increase operating costs, the alternatives supported by the Missouri Chapter of the American Fisheries Society in the January 21 briefing paper are essentially the same as conditions of the U.S. Army Corps of Engineers General Permit #34 which was in effect from April 1995 to April 1999. So, claims by rules opponents that excavation rules will regulate them out of the business are without basis. Furthermore, there have been no documented negative economic impacts to the Ozarks region or the mining industry as a result of this earlier regulation. Adopting excavation rules would provide a foundation for fair competition among all commercial gravel miners.

The negative effects of in-stream gravel mining are well documented in the scientific research literature and have been proven not only nationally but also in the Ozarks of Missouri and Arkansas. Effects include:

- ▶ erosion of streamside private property and its real estate value,
- ▶ erosion of public property
- ▶ damage to private and public infrastructure such as roads, bridges, pipelines, and utility lines
- ▶ losses in productivity of valuable fisheries, and
- ▶ losses to biological diversity.

Claims by rules opponents that gravel must be "cleaned out" of our streams to prevent erosion or should be bulldozed against eroding stream banks to protect them are quickly revealed as untrue once these claims are compared to knowledge of stream behavior uncovered by scientists over the last 20 years.

While you already know our position on each of the rules as described in the January 21 briefing paper, we urge you to give specific attention to two of the rules. Rule #2

requires an undisturbed buffer between the excavation area and the waterline, and the excavation area and the stream bank. It is important that a definitive buffer width be established for enforceability. Rule #4 affects the depth of excavation. To avoid the major damages from head cutting listed earlier, it is imperative that excavation not be done below the water surface elevation or below the lowest point in the stream bed if the stream is dry.

We acknowledge that your task is not an easy one, but we urge you to seek excavation rules that draw a fair balance between continued economic viability of the in-stream mining industry and stream resource protection and all the associated recreational, economic, social, and environmental benefits derived from healthy Missouri streams. We thank the Missouri Department of Natural Resources for inviting us to participate in the four working group meetings, and special thanks to you for the opportunity to speak today about this important stream resource issue.

[Mining economic data from Mining Industry Council of Missouri website as posted in early 1999.]

[Fishing economic data from 1996 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation.]

Linda L. Garrett
10949 Prescott Road
Licking, MO 65542

March 24, 2003

Land Reclamation Commission
Department of Natural Resource
P.O. Box 176
Jefferson City, Missouri 65102

RE: Sand & Gravel Issue

Dear Commission,

As commissioners of the Land Reclamation you have a huge task before you in deciding what to do on the sand and gravel issue.

I have read the letters posted on the internet that you should be receiving from the different groups requesting regulations instead of guidelines. As I read these letters I notice many were form letters with an unreadable signature and no address. I also notice some that did give their address talked about how the Ozark streams needed to be protected but their addresses showed these people living in St. Louis, Columbia, Jefferson City and etc.

I hope you realize these letters are coming from special interest groups and not the majority of the people living in Missouri and especially not from the people living by these Ozark streams. I understand people from these special interest groups are citizens of Missouri and they need to be heard. What I can't understand is why would a commission listen to these groups above county elected commissioners. I hope this is not the case with your commission.

As you are aware of the County Commissioner's Association of Missouri voted unanimously on a resolution in opposition to changing the present sand and gravel guidelines into regulations. Each Associate Commissioner voting on this resolution was elected by the majority of the voting citizens living in their district and each Presiding Commissioner by the majority in the entire county. These commissioners live and work in their counties, they are very protective of their citizens and their environment. They too love these streams and many like to fish and canoe but they know what works or doesn't work in their streams. They are not the weekend fishermen that comes to fish a few times a year and then returns to the city. They see the everyday changing of these streams and they know what needs to be done to save the streams and their banks.


There may of been a few unrealistic studies preformed and some exaggerated scientific examples shown but in the real streams these studies are not accurate. We have a stream in our county where gravel had been mined for years with no problems but a few years back it was stopped. The gravel started building up and the stream started changing and taking farm land. MDC has tried to conduct unsuccessful scientific studies or rather experimental studies on this stream. The sad thing is that if left alone the gravel mining would of taken care of all the problems this stream is now causing.

The weekend fishermen that are opposed to gravel mining do not realize that gravel mining in the Ozarks is what has made these streams some of the best in Missouri. The people that want to save the world from the people living in the Ozarks do not understand, we have spent generations saving this part of the world for them to enjoy. We have successfully dealt with our streams for many years but the proposed regulations will tie our hands and eventually will ruin our streams for the enjoyment of everyone. They will also cause some of our best farmland to be washed away. No, maybe not in our lifetime but in our grandchildren's lifetime. As our grandfathers before us, we want to pass these beautiful streams and these bottom lands to our children and to future generations .

This is why we continue to oppose changing the present guidelines into regulations. We have not only worked hard to keep our streams opened with clear water running in them but we have done a great job in doing so.

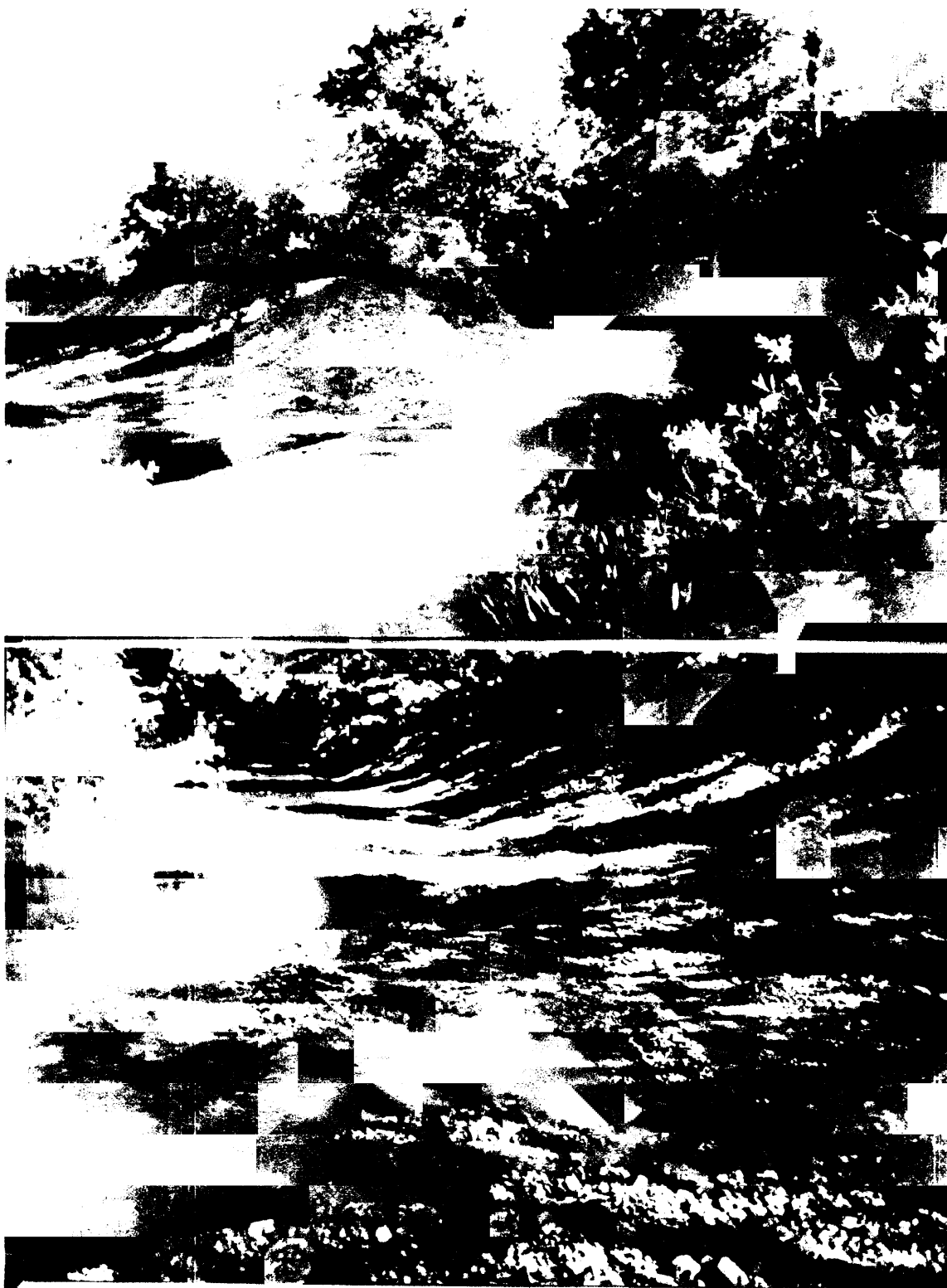
I understand the March 26th. meeting is to discuss the wording of the proposed regulations and I would like to help make your job easier with the wording PRESENT SAND AND GRAVEL GUIDELINES.

Sincerely,



Linda L. Garrett
Texas County
Assoc. Commissioner





Hello:

I'd like to share with you my/our experience here in Northern Reynolds County of Missouri. We bought our first property in Reynolds County in 1973, a farm we still own and where we now reside. In 1973 when we started camping there and for some years later, the stream, Little Brushy Creek, which parallels Reynolds County Road # 818, and which eventually flows into Middle Fork of the Black River, was a beautiful, pristine stream with well vegetated banks and some gravel, but not an excessive amount. It was not too many years ago we started seeing changes in the creek, and those changes began immediately after the Reynolds County road crew began driving heavy equipment directly into the stream bed and "working it over" really good. I have videotaped one actual instance where the equipment (with operator) was directly in the middle of the water scraping, scraping, scraping gravel and whatever else was in the gravel such as fish eggs, macroinvertebrates, etc., up onto the "bank".

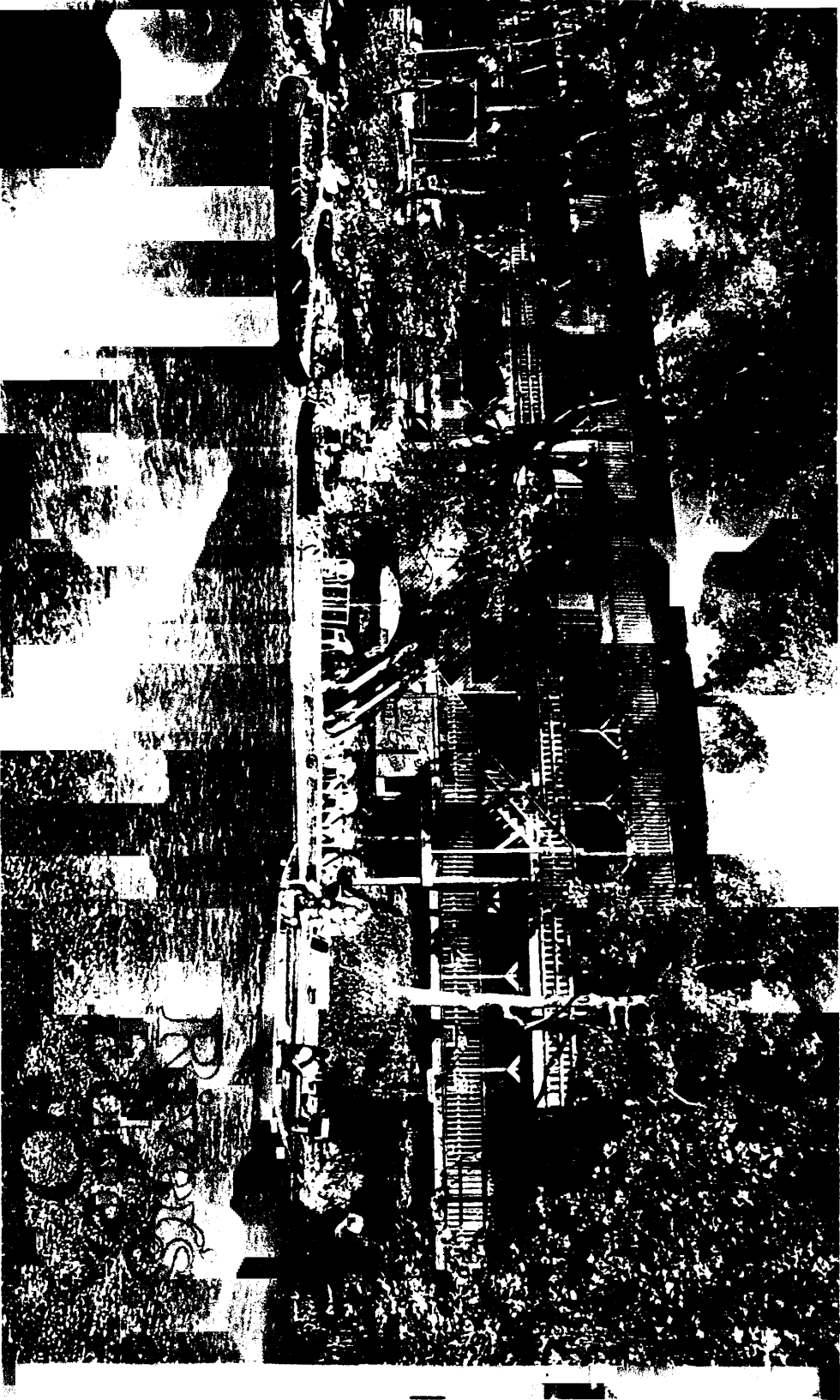
Over the years this process has resulted in higher and higher banks, so that now the so-called banks are huge berms taller than a vehicle. Further, the actual carrying capacity of the stream has diminished because the same amount of gravel is still there but it has created pyramidal shaped berms on each side, with the base of these pyramidal berms growing wider with each incursion into the creek by these machines. Before this creek "work" done by the ROAD crew, (not a stream crew by the way), there were small crevices and low spots along the bank where in flood stage the water had somewhere to flow and level out, slowing down in the process, and relieving the creek of pressure. Now, hemmed in by these huge berms, the water in flooding has no where to go but down stream, and does it ever. The first outside bend of the creek downstream from the low water bridge where R.C.# 818 crosses is totally devoid of vegetation as this is the first target of the rushing flood water now. That bend years ago was healthy with vegetation but no more.

If the "road" crew would scrape and remove DRY GRAVEL in the summer months from the dry gravel bar, but not from the stream bed, they would not damage aquatic life and its habitat, and in the process would obtain some free gravel to apply to the R.C. roads which is always in short supply.

Thanks for letting me comment on a bad practice that is slowly destroying a good stream.

Linda Tanner

Black, Mo





This is the Rivers Edge after Gravel Mining- note the large amount of gravel that has been placed in front of the Rivers edge. The old swimming hole under the bridge and the Canoe access beach is gone.

From RIVER'S EDGE the "INN" RESORT

To Whom it may concern,

In the summer of 1988 we called the US Army Corps of Engineers about the trees and gravel being removed from the island across the river from our Resort on the Jack's Fork River. The Corps said they would check it out. The destruction continued in the spring of 1989, so we called them again, they said it was under permit. We were shocked and knew from previous experience that this would eventually change the course of the river.

At first, in 1989, the middle and lower part of the island was cleared and leveled. A new beach was created. It was OK at first, and then in desperation, the contractor

Started going towards the upper end cleaning, and pushing back even more a critical bank stabilizing vegetation. The naturally established river bank was destabilized as further gravel mining and brush removal continued. (See black and white and aerial photos.)

And then along came the devastating floods of the fall of 1993, expanding the tunnel, created by this irresponsible and blatant degradation. A new river channel was created by the combination of natural force and obviously, abuse by man and machine. Our Resort, which is one of the few man made attractions in the area, bringing much needed Guests, that wouldn't ordinarily come here. Now, because of what was done here, our Resort no longer has riverfrontage in front of it. Instead, we have a stagnate, muddy slough, where the crystal clear river has been since at least since 1939. (See aerial photos) With the river right in front of our building, this is what made our resort creation possible. We think it is a blatant crime for the U.S. Corps of Eng. to permit someone to do this, to us, our guests and the river and its users. Also our property does not go to the river now...

1. Complaint: In the spring of 1988, we noticed clearing and gravel removal, directly across from our resort, next to the river. We were concerned about the damage being done to the island, so we called the U.S. Corps of Engineers, to complain about the problem.

2. Response: The Corps came to inspect the operation and stopped the work temporarily because it was unpermitted. Then the corps drafted a permit for the removal of gravel, right through the center of the island, taking it down to river level, and removing over half of it. Also blocking off the secondary channel, which is now filled in.

J. Permit: In this permit drafted by the Corps...

A. No respect was given to established vegetation that provided bank stabilization for over fifty years.

B. No consideration was given to the hydrological force of the river or its established course.

C. Jerry Harris-U.S. Corps: \-of Eng. of Little Rock said, "We drafted the permit to Phillip Titus, using the gravel mining permit Issued at Doniphan mo. as a model." (This situation is no way comparable to the situation on the Titus property) Also at the Doniphan bridge site there is no business in sight and the river is about 7 times the size of the river here. He also said, "We stepped out of bounds on this permit, we don't permit gravel removal on a stream of this size. We got Involved because of the crossing Of a secondary channel." (The channel was dammed up and sealed off causing more of a problem.)

4. Public Notice: Jerry Harris of the Corps said that under federal law we are required to issue a public notice, notifying adjacent land owners of the permit in 'progress and giving them a chance to respond or appeal. When I asked him who was notified he said, Edna Staples of circle B campground. (This campground is about 113 mile upstream from this site and barely visible) and the state Hwy. Dept. and no objection was given.

There is no way that anyone could not see our Resort from this site. It is only a stones throwaway, Is huge, and the only building in sight. IT IS ABSOLUTLY IRRESPONSIBLE AND ABSURD, THAT WE, THE ONES THAT MADE THE COMPLAINT IN THE FIRST PLACE, WE WERE NOT CONTACTED TO COMMENT ON THIS BLATENT PERMIT!

5. Inspections: Mr. Harris Informed us at our last meeting in Rolla, that at least] inspections were made. An 18" culvert was never installed in the upper diversion dam.

update 3-25-03 - Since the river change nothing
has been done. I hired a hydrologist and
payed him thousands dollars for an assessment
and possible solution. Then we consulted
several attorneys. One said you can't reasonably
sue the U.S. Government because they have
all the experts and unlimited funds. Another
said you would be best off making a
substantial "Campaign Contribution", That's
what I do every year and consider it a
business expense. I responded, I'm sorry
to hear that, and he replied that the way
it is. ☺

• Today that south river bank just above
the bridge continues to severely erode. The
MDC now owns the land for public access.

In 1975 they purchased the river property
and it was about 200' deep, as of now they have
lost about $\frac{1}{2}$ of that. This is the most needed and
used state land in the county. The state has
not improved the site because there is no room for
a parking lot. Soon there will be no land on the
south for any access. Why? for few hundred
dollars of gravel? We have lost countless dollars in
revenue a sales tax. I see a definite need for
bonding, state regulating and responsible inspecting
and protecting other landowners and stream banks. ☺

Alan Peters

Eminence, Mo

COMMITTEE ON LEGISLATIVE RESEARCH

OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1091-01

Bill No.: SB 360

Subject: Licenses - Misc.; Natural Resources Dept.; Mining and Oil and Gas Production

Type: Original

Date: February 17, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated			
Net Effect on			
General Revenue			
Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Mined Land Reclamation Fund	\$26,000	\$26,000	\$26,000
Total Estimated			
Net Effect on Other			

State Funds	\$26,000	\$26,000	\$26,000
--------------------	-----------------	-----------------	-----------------

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 3 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated			
Net Effect on All			
Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials with the **Department of Transportation, Department of Economic Development, Department of Revenue, Office of Attorney General and Department of Conservation** assume no fiscal impact to their agency.

Officials with the **Department of Natural Resources** assume this proposal would exempt any sand or gravel operator that mines less than 5,000 tons of gravel per year from regulation and licensing.

Currently, there are approximately 130 operators who remove less than 5,000 tons of sand and gravel from streams annually. Each permit costs \$300 ($130 \times \$300 = \$39,000$). The cost for administering, permitting, and enforcing these permits averages \$500 each ($130 \times \$500 = \$65,000$). Therefore, the department assumes there would be a net cost avoidance of \$26,000 as a result of this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2004	FY 2005	FY 2006
	(10 Mo.)		
<u>Savings - DNR</u>			
Mined Land Reclamation Fund	\$26,000	\$26,000	\$26,000
	\$26,000	\$26,000	\$26,000

<u>FISCAL IMPACT - Local Government</u>	FY 2004	FY 2005	FY 2006
	(10 Mo.)		
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This act exempts any sand or gravel operator that mines less than 5,000 tons of gravel per year from

regulation and licensing.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General

Department of Natural Resources

Department of Transportation

Department of Economic Development

Department of Revenue

Department of Conservation

Mickey Wilson, CPA

Director

February 17, 2003

pages out of
order
need to recheck...



Public Notice

OCT 6 - 1997

US Army Corps
of Engineers
Kansas City District
Leaders in Customer Care

Reply To:
U.S. POLICE COORDINATION of Engineers
Attn: CEMRK-OD-PE (GP-34M)
700 Federal Building
Kansas City, MO 64106-2896

Public Notice No. GP-34M
Public Notice Date December 18, 1997

Postmaster Please Post Conspicuously Until: January 18, 1998

STATE OF MISSOURI ISSUANCE OF GENERAL PERMIT SAND AND GRAVEL EXCAVATION ACTIVITIES

The U.S. Army Corps of Engineers, Kansas City District HAS ISSUED general permit MRKGP-34M for Sand and Gravel Excavation Activities in waters of the United States within the State of Missouri under the authority of Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

Duration of this General Permit. The general permit has been issued and is in effect until December 17, 2000, unless revoked or specifically extended.

Notification Procedures. Most individuals desiring to undertake work authorized by this general permit must notify the District Engineer, Kansas City District. The notification must include a detailed drawing(s) and sufficient information to determine if the proposed work conforms to the criteria and conditions of the general permit. Application form ENG Form 4345 (Enclosure 1) may be used for this purpose. Copies of ENG Form 4345, instructions or assistance may be obtained by writing or calling the Kansas City District. Small, personal use activities as specified in Appendix I of the permit do not require notification to the Corps of Engineers.

If the Corps determines that the work meets the provisions of the general permit, and no extraordinary conditions exist that warrant evaluation as an individual permit, the proponent will be notified to proceed. If the Corps determines that the subject work does not meet the provisions of the general permit, or that extraordinary conditions exist, the applicant will be notified that an individual permit will be necessary. Additional information concerning limitations and general and special conditions of the permit can be obtained by writing to the address at the top of this page or by calling 816-426-3645.

Conditions of this General Permit. All activities authorized by this general permit must comply with the general and special conditions of the enclosed copy of general permit (Enclosure 2).

David A. Jackson
Deputy Chief for Operations
Construction-Operations Division

DEPARTMENT OF THE ARMY PERMIT

Permittee General Public

Permit No. MRKGP-34M, Sand and Gravel Excavation Activities

Issuing Office U.S. Army Engineer District, Kansas City

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Project Description: Proposed and/or Completed Work: This permit authorizes the discharge of dredged and/or fill material incidental to mechanical sand and gravel excavation as described in Appendix I. Discharges authorized are limited to those which occur during the actual excavation process and those associated with preparation and restoration of the site (as outlined in Special Conditions g. and h.).

Project Location: Waters of the United States, including activities upstream of the defined headwater point, within the State of Missouri, excluding the Missouri and Mississippi Rivers, and waters designated by the state of Missouri as Outstanding National Resource Waters or Outstanding State Resource Waters (see attached list, state regulation 10 CSR 20-7.031).

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 17, 2000. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

See continuation sheets, pages 4 and 5, of this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(x) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(x) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

Special Conditions:

- a. If any part of the authorized work is performed by a contractor or other party, before starting work you must discuss the terms and conditions of this permit with the contractor or party; and, you must give a copy of this entire permit to the contractor or other party involved in the excavation activities. The permittee remains responsible for ensuring compliance with all aspects of this permit.
- b. You must limit excavation of sand or gravel deposits to unconsolidated areas containing primarily smaller material (at least 85% of material is less than 3" in diameter) that is loosely packed and contains no woody perennial vegetation greater than 1 inch in diameter, measured at breast height (4.5 feet).
- c. You must maintain an undisturbed buffer of twenty (20) feet (or as specified on the attached project authorization page(s) of this permit) between the removal area and the water line at the time of excavation, and between the removal area and bank vegetation. Personal use activities involving excavation under 100 cubic yards of material, as specified in Appendix I, paragraph 3, must maintain an undisturbed buffer of ten (10) feet in the areas specified previously.
- d. You must maintain a twenty five (25) foot wide streamside (riparian) corridor in an undisturbed condition landward of the high bank for the length of the gravel removal site. Disturbed areas in this riparian zone shall be limited to maintained access road(s) for ingress and egress only. No clearing within this riparian area is authorized in association with work authorized by this permit.
- e. You must not excavate sand or gravel below the elevation of the water at the time of removal. If the stream is dry at that time, you must not excavate deeper than the lowest undisturbed elevation of the stream bottom adjacent to the site, unless specified otherwise on the attached project authorization page(s) of this permit.
- f. You must not relocate, straighten, or otherwise modify water conveyance areas within the channel. A "water conveyance area within the channel" is defined as that area between the high banks of the creek where water is flowing or, in the case of a dry stream, where water would flow after a rain event.
- g. Within 30 days of the removal of excavation equipment from the site, you must revegetate or otherwise protect from erosion, those streambank areas disturbed by the removal operation. For long-term operations (longer than 30 days) or for sites that will be periodically revisited as gravel is deposited, access points must be appropriately constructed and maintained such that streambanks and access roads are protected from erosion.
- h. Prior to the removal of excavation equipment from the site, oversized material or other disturbed bed material must be removed or replaced in the removal area and smoothed to approximately the original contours of the sand or gravel deposit, as much as possible. Oversized material is preferred when available as it better stabilizes the disturbed bar. All required buffer areas must remain intact and should not be smoothed as part of this condition. Any aggregate, fines, and/or oversized material removed from the site must be placed in an upland, nonwetland site that has been approved by the landowner. No material, including oversized, that results from the excavation activity may be stockpiled or otherwise placed into flowing water or placed against streambanks as bank stabilization, unless specifically authorized in writing by the Corps of Engineers.
- i. You must conduct all sand or gravel washing, gravel crushing, and gravel sorting above the high bank, in a nonwetland area away from areas that flood, such that gravel, silt, and wash water that is warm, stagnant, or contains silty material can not enter the stream or any wetland. A separate permit and/or settling basin for the discharge of return water may be required under Section 402 of the Clean Water Act from the Missouri Department of Natural Resources, Water Pollution Control Program, Permit Section (314-751-6825). Gravel crushing and/or sorting activities which do not require wash water are allowed to occur on the gravel bar, provided all fines are immediately removed from the gravel bar and not stockpiled or otherwise disposed of on the gravel bar, into the stream or any other water of the U.S. (including wetlands). All fines resulting from the sorting operation must be captured in a transport truck or other suitable container and removed from the sorting location to a suitable disposal site the same day the sorting occurs. All sorted aggregate must be removed from the gravel bar at the end of each working day, with the exception of oversized material that will be spread out in the excavation area following project completion.

Special Conditions:

- a. If any part of the authorized work is performed by a contractor or other party, before starting work you must discuss the terms and conditions of this permit with the contractor or party; and, you must give a copy of this entire permit to the contractor or other party involved in the excavation activities. The permittee remains responsible for ensuring compliance with all aspects of this permit.
- b. You must limit excavation of sand or gravel deposits to unconsolidated areas containing primarily smaller material (at least 85% of material is less than 3" in diameter) that is loosely packed and contains no woody perennial vegetation greater than 1 inch in diameter, measured at breast height (4.5 feet).
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- f. You must not relocate, straighten, or otherwise modify water conveyance areas within the channel. A "water conveyance area within the channel" is defined as that area between the high banks of the creek where water is flowing or, in the case of a dry stream, where water would flow after a rain event.
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- i. You must conduct all sand or gravel washing, gravel crushing, and gravel sorting above the high bank, in a nonwetland area away from areas that flood, such that gravel, silt, and wash water that is warm, stagnant, or contains silty material can not enter the stream or any wetland. A separate permit and/or settling basin for the discharge of return water may be required under Section 402 of the Clean Water Act from the Missouri Department of Natural Resources, Water Pollution Control Program, Permit Section (314-751-6825). Gravel crushing and/or sorting activities which do not require wash water are allowed to occur on the gravel bar, provided all fines are immediately removed from the gravel bar and not stockpiled or otherwise disposed of on the gravel bar, into the stream or any other water of the U.S. (including wetlands).
- j. All fines resulting from the sorting operation must be captured in a transport truck or other suitable container and removed from the sorting location to a suitable disposal site the same day the sorting occurs. All sorted aggregate must be removed from the gravel bar at the end of each working day, with the exception of oversized material that will be spread out in the excavation area following project completion.

Special Conditions: (continued)

- j. You must not excavate in those areas authorized by this general permit during the dates specified on the attached project authorization page(s) in the block identified as "Seasonal Restrictions". This time period restriction is for the purpose of protecting spawning habitat and juveniles indigenous to the cited stream.
- k. You must limit vehicles and other equipment to removal sites and existing crossings. Streams must be crossed perpendicular to the stream. You must obtain written approval from the Corps of Engineers, Regulatory Branch, before constructing any temporary or permanent stream crossing(s). Use of off road vehicles in streams is also regulated under Missouri State Law (RSMo 1991 Section 304.013).
- l. Fuel, oil, and other wastes and equipment containing such wastes shall not be stored nor released at any location between the high banks or in a manner such that they could enter the stream channel. You must dispose of such materials at authorized locations.
- m. No activity is authorized under this general permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the habitat of such species. See Appendix II, paragraph No. 1 for permitting requirements if these species are likely to be present or their habitat would be adversely modified.
- n. No activity which may affect Historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR 325, Appendix C. All prospective permittees must notify the District Engineer if the excavation activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places.
- o. You must provide notification to the appropriate Corps of Engineers district, as specified in Appendix I, before you initiate any gravel removal activity and receive written confirmation of authorization under this general permit from the Corps of Engineers before you start any excavation or related operations.

APPENDIX I

CRITERIA FOR AUTHORIZATION BY GENERAL PERMIT MRKGP-34M

1. The appropriate District Engineer has the discretion to require an individual permit on a case-by-case basis for any activity authorized herein.
2. This general permit applies to the general public and governmental agencies when such activities are performed to provide immediate construction materials or materials stockpiled in an upland area for private use or commercial sale. Excavation and dredging activities occurring in flowing or open water, such as hydraulic dredging, are not included in this authorization.
3. Private property owners are authorized to remove up to a total of 100 cubic yards of gravel per year from any single gravel bar location on their property, for their personal use, without regard to special condition o (notification requirements). Excavation activities for personal use must comply with all conditions of this permit. This does not relieve any personal use applicant from notifying the appropriate Corps district if the activity may affect a Federally threatened or endangered species or its habitat (see Appendix II, Endangered Species Consultation). If you have any questions concerning threatened and endangered species possibly occurring in your project area, you should contact the appropriate Corps of Engineers district or the U.S. Fish and Wildlife Service.
4. The cumulative impacts of this general permit may be reevaluated at the discretion of the Corps of Engineers at any time, but will be reevaluated at least every five (5) years.

APPLICANT NOTIFICATION REQUIREMENTS

(does not apply to personal use activities under 100 cubic yards)
(see Appendix I, paragraph 3, above)

5. If you wish to perform work under the authority of this General Permit, you must provide notification to the appropriate Corps of Engineers district before you initiate any gravel removal activity. You must submit the following information in this notification:

- (1) A completed application form ENG 4345, or equivalent information
- (2) A clearly marked site location map.
- (3) A drawing showing the details of the proposed work (Plan and Cross-sectional views of each excavation area).
- (4) An operation plan which describes how you will conduct the work, details how impacts to the stream will be avoided and/or minimized, and measures to restore the site following completion of excavation.

You must receive written confirmation of authorization under this general permit from the Corps of Engineers before you start any excavation or related operations. Completed activities considered for authorization after-the-fact under the general permit must conform to all conditions of the permit. After-the-fact authorization under this general permit will generally be limited to one activity per applicant.

Note to Commercial Operators: As set forth in the Land Reclamation Act, Chapter 444.770.3. RSMo, this Section 404 general permit may satisfy your permitting requirements with the Missouri Department of Natural Resources' Land Reclamation Program (LRP). If your activity is authorized by this general permit, the Corps of Engineers will forward a copy of this permit to the LRP. You should contact the LRP at 314-751-4041 to determine whether or not an LRP permit is also required.

APPENDIX II

CORPS REVIEW PROCEDURES FOR AUTHORIZATION BY GENERAL PERMIT MRKGP-34M (for Corps use only)

1. ENDANGERED SPECIES CONSULTATION. The excavation activity must not be located in any waterbody identified as containing potential habitat for any Federally listed threatened or endangered species unless, following coordination with the U.S. Fish Wildlife Service, a "no effect" or "not likely to adversely affect" determination is agreed upon between the Corps of Engineers and the U.S. Fish and Wildlife Service. These waterbody locations will be maintained by the Corps of Engineers and will be referenced for each individual activity.

Activities authorized under this general permit may affect the following species and/or habitat; Niangua Darter, Neosho Madtom, Curtis' Pearly Mussel, Pink Mucket Pearly Mussel, and bald eagle. The Corps of Engineers will maintain a list of water where the activities authorized under this permit may affect such listed species or designated critical habitat. If the proposed activity is located in any water included in this list, the following conditions must be met and will be coordinated with the appropriate Corps of Engineers District:

1) Each proposed activity within the range of the above species must be coordinated with the U.S. Fish and Wildlife Service and Missouri Department of Conservation to allow for timely, site specific evaluation and concurrence that the activity, as conditioned under the general permit, is not likely to adversely affect listed species or designated critical habitat.

2) Additional project specific conditions must be imposed if, through timely informal consultation between the Service and the Corps, they are determined to be necessary to avoid the likelihood of adverse effects to listed species or designated critical habitat.

3) In the event that the likelihood of adverse effects to listed species or designated critical habitat cannot be avoided, authorization will not be provided under the general permit until such time as: i) formal consultation between the Service and the Corps is provided; ii) a non-jeopardy Biological Opinion is issued; and iii) the terms and conditions of any associated Incidental Take Statement are incorporated as enforceable conditions to the project authorization under the general permit.

2. PROJECT DOCUMENTATION AND COMPLIANCE. The authorized work must be documented on the attached Project Authorization Page(s) by the Corps of Engineers. A separate Project Authorization Page must be completed for each separate excavation site. This allows multiple copies of this page to be attached to the general permit, thereby documenting site specific requirements for several excavation locations conducted by single applicant. The Project Authorization Page(s) also serves to document site specific variances from special conditions c., e., and j. of the general permit or to add special conditions for protection of Federally listed species. A separate plan view depicting the relative location of several sites in relation to one another may also be attached to clarify site number locations. Also, these data will be used as a tool to ensure compliance with the conditions of the general permit.

THIS ENTIRE PAGE WILL BE COMPLETED BY THE CORPS OF ENGINEERS

VERIFICATION OF MRKGP-34M PROJECT AUTHORIZATION

1. Identification Number and/or Site No. (Assigned by Corps)

2. Corps Approving Official (Not Valid unless signed)

3. Applicant (Company or Name)

4. Responsible Person (if different from applicant)

5. Detailed Location Description (A drawing, on the reverse side, may also be used in addition to this block)

6. Minimum Buffer Strip Distances:

Approving Official

6a. Excavation Area to Water Line

feet

6b. Excavation Area to Bank/Bank Vegetation

feet

6c. Other (specify)

feet

7. Excavation Depth Information

Note if authorization allows excavation below the elevation of the adjacent stream bottom (Justification required such as presence of bed rock to prevent head cutting, excessive bedload, or other appropriate reasons)

8. Seasonal Restrictions

(You must not excavate during the time frames specified below)

Restricted Excavation - Start Date (mm/dd/yy) through End Date (mm/dd/yy) (inclusive)

Approving Official

8a.

8b.

8c.

8d.

9. Comments, Site Specific Conditions, etc.

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Service, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Please DO NOT RETURN your form to either of these addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine Uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to the application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
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(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required)
6. APPLICANT'S ADDRESS	9. AGENT'S ADDRESS
7. APPLICANT'S PHONE NOS. W/AREA CODE a. Residence b. Business	10. AGENT'S PHONE NOS. W/AREA CODE a. Residence b. Business

11. STATEMENT OF AUTHORIZATION

I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE

DATE

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)

13. NAME OF WATERBODY, IF KNOWN (if applicable)

14. PROJECT STREET ADDRESS (if applicable)

15. LOCATION OF PROJECT

COUNTY

STATE

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (see instructions)

17. DIRECTIONS TO THE SITE

Activity (Description of project, include all features)

Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

for Discharge

Material Being Discharged and the Amount of Each Type in Cubic Yards

Area in Acres of Wetlands or Other Waters Filled (see instructions)

Completion of the Work Already Complete? Yes ☐ No ☐ IF YES, DESCRIBE THE COMPLETED WORK

Names of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (If more than can be entered here, attach a supplemental list).

Other Certifications or Approvals/Denials Received from other Federal, State or Local Agencies for Work Described in This Application.

CY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
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but is not restricted to zoning, building and flood plain permits

A statement is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this statement is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the authorized agent of the applicant.

NATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

This statement must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent. The statement in block 11 has been filled out and signed.

Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States Government, willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

Table D
Outstanding National Resource Waters

Stream	Location
Current River	Headwaters to Northern Ripley Co. Line
Jacks Fork River	Headwaters to Mouth
Eleven Point River	Headwaters to Hwy. 142



Table E
Outstanding State Resource Waters

Waterbody	Miles/Acres	Location	County(ies)
Baker Branch	4 mi.	Taberville Prairie	St. Clair
Bass Creek	1 mi.	In Three Creek State Forest	
Big Buffalo Creek	1.5 mi.	Big Buffalo Creek Wildlife Area	Benton-Morgan
Big Creek	5.3 mi.	Sam A. Baker State Park	Wayne
Big Sugar Creek	7 mi.	Cuivre River S.P.	Lincoln
Big Lake Marsh	150 ac.	Big Lake State Park	Holt
Brush Creek	0.7 mi.	Bonanza Wildlife Area	Caldwell
Bryant Creek	1.5 mi.	Bryant Creek Natural Area in Rippee Wildlife Area	Ozark, Douglas
Cathedral Cave Branch	5 mi.	Onondaga Cave State Park	Crawford
Coakley Hollow	1.5 mi.	Lake of the Ozarks State Park	Camden
Coonville Creek	2 mi.	St. Francois State Park	St. Francois
Courtois Creek	12 mi.	Mouth to Hwy. 8	Crawford
Crabbapple Creek	1.0 mi.	Bonanza Wildlife Area	Caldwell
Devils Ice Box Cove Branch	1.5 mi.	Rock Bridge State Park	Boone
East Fork Black River	3 mi.	Johnson's Shut-Ins State Park	Reynolds
First Nicholson Creek (East Drywood Creek)	2 mi.	Prairie State Park	Barton
Gan's Creek	3 mi.	Rock Bridge State Park	Boone
Huzzah Creek	6 mi.	Mouth to Hwy. 8	Crawford
Indian Creek	17.5 mi.	Mark Twain National Forest	Douglas-Howell
Ketchum Hollow	1.5 mi.	Roaring River State Park	Barry
Little Piney Creek	25 mi.	Mouth to 21.35N,06W	Phelps
Little Black River	3 mi.	Mud Puppy Natural History Area S22,T24N,R3E to S25,T24N,R3E	Ripley Caldwell
Log Creek	0.4 mi.	Bonanza Wildlife Area	Crawford, Franklin
Meramec River	8 mi.	Adjacent to Meramac State Park	
Meramec River	3 mi.	Adjacent to Onondaga and Huzzah State Forest	
Noblett Creek	5 mi.	Above Noblett Lake, Mark Twain National Forest	Douglas-Howell
Onondaga Cave Branch	0.6 mi.	Onondaga Cave State Park	Crawford
Pickle Creek	3 mi.	Hawn State Park	Ste. Genevieve
S. Prong L. Black River	2 mi.	In Little Black State Forest	
Shoal Creek	0.5 mi.	Bonanza Wildlife Area	
Spring Creek	17 mi.	Mark Twain National Forest	Douglas
Taum Sauk Creek	5.5 mi.	Johnson's Shut-Ins State Park Addition S23,T33N,R2E to S5,T33N,R3E	Reynolds-Iron
Turkey Creek	3 mi.	In Three Creeks State Forest	Boone
Van Meter Marsh	50 ac.	Van Meter State Park	Saline